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ACTS OF THE GENERAL ASSEMBLY OF THE PROVINCE OF NEW BRUNSWICK RELATING TO THE SAINT JOHN WATER COMPANY

COMMISSIONERS

AND WATER SUPPLY

LAWS OF THE WATER COMMISSIONERS,

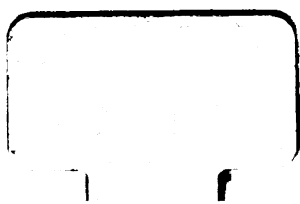
AND
OF THE SUPREME COURT.

CHARLES R. RAY,

CLERK, under the Commissioners of Sewerage and Water Supply.

SAINT JOHN, N. B.:

"GLOBE" STEAM BOOK AND JOB-PRINTING OFFICE.
1881.CAN/NB
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*New Brunswick Laws, statutes, &c., Public
utilities laws.*

ACTS
OF THE
GENERAL ASSEMBLY

OF THE
PROVINCE OF NEW BRUNSWICK

RELATING TO

THE SAINT JOHN WATER COMPANY

AND THE

COMMISSIONERS

OF

SEWERAGE AND WATER SUPPLY

FOR THE CITY OF SAINT JOHN (EAST SIDE), AND PARISH OF PORT-
LAND, IN THE COUNTY OF SAINT JOHN.

ALSO:

BYE-LAWS OF THE WATER COMMISSIONERS,

AND

DECISIONS OF SUPREME COURT.

REVISED BY

CHARLES R. RAY,

Chairman of the Commissioners of Sewerage and Water Supply.

SAINT JOHN, N. B.:

"GLOBE" STEAM BOOK AND JOB PRINTING OFFICE.
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5/18/49 index rev



ACTS OF ASSEMBLY

RELATING TO

WATER SUPPLY AND SEWERAGE.

II WILLIAM IV.—CHAPTER 26.

AN ACT TO INCORPORATE SUNDRY PERSONS BY THE NAME OF THE SAINT JOHN WATER COMPANY.

Section.

1. Incorporation of Company.
2. Capital.
3. General meeting, when to be called.
4. Directors, when chosen.
5. Officers, how appointed, &c.
6. Board of Directors.
7. Directors not to have a salary; exception.
8. Qualification of Directors.
9. Scale of Votes.
10. Who to Vote, &c.

Section.

11. Number of shares first to be held.
12. Directors, vacancies among, how filled.
13. Shares assignable, &c.
14. Dividends.
15. Private property, how may be used.
16. Roads, &c., how may be used.
17. When Mayor, &c., may interfere.
18. Vents, &c., by whom to be made.
19. When Mayor, &c., may take whole stock, &c.

Passed 9th March, 1832.

WHEREAS it is thought the establishment of a Water Company in the City of Saint John would promote the interest and convenience of the inhabitants of the City of Saint John, by increasing and facilitating the means of procuring water therein;

Be it enacted, etc.—1. The Honorable William Black, Nehemiah Merritt, James White, John Ward, George D. Robinson, Thomas Barlow, Hugh Johnston, John M. Wilmot, James Hendricks, Thomas Millidge, Robert W. Crookshank, Zalmon Wheeler, Robert Parker, William B. Kinnear, Richard Sands, Lauchlan Donaldson, Charles Simonds, James T. Hanford, William Leavitt,

and Noah Disbrow, their associates, successors, and assigns, be, and they are hereby declared to be a body corporate, by the name of "The Saint John Water Company;" and they shall be persons able and capable in law to have, get, receive, take, possess, and enjoy houses, lands, tenements, hereditaments, and rents, in fee simple or otherwise, and also goods and chattels, and all other things real, personal, or mixed, and also to give, grant, let, or assign the same or any part thereof, and to do and execute all other things in and about the same as they shall think necessary for the benefit and advantage of the said Corporation; and also that they be persons able, in law capable, to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in any Court or Courts of law or equity, or other places whatsoever, in all and all manner of actions, suits, complaints, demands, pleas, causes, and matters whatsoever, in as full and ample a manner as any other person or persons are in law capable of suing and being sued, pleading and being impleaded, answering and being answered unto; and also that they shall have one common seal to serve for the ensembling of all and singular their grants, deeds, conveyances, contracts, bonds, articles of agreements, assignments, powers, warrants of attorney, and all and singular their affairs and things touching and concerning the said Corporation; and also that the said Company, or the major part of them, shall from time to time and all times, have full power, authority, and licence to constitute, ordain, make, and establish such laws and ordinances as may be thought necessary for the good rule and government of the said Corporation; provided that such laws and ordinances be not contradictory or repugnant to the laws or statutes of that part of the United Kingdom of Great Britain and Ireland called England, or repugnant or contrary to the laws and statutes of this Province.

2. The capital or stock of the said Corporation shall consist of (the words here omitted are repealed by 2 V., c. 33, s. 1) the amount of twenty thousand pounds; five per cent. of which to

be paid (the words here omitted are repealed by 2 V., c. 33, s. 1) within twelve months after the passing of this Act, and the residue thereof as may be required by the President and Directors of the said Company for the service thereof, a month's notice being by them previously given in two of the public newspapers of the said City of Saint John, that the residue, or any part thereof, will be required; the whole amount of the said stock to be divided into shares of five pounds each, making in the whole four thousand shares.

3. Whenever one thousand shares have been subscribed, a general meeting of members and stockholders, or the major part of them, shall take place by notice in one or more public newspapers of the City of Saint John, thirty days previous to such meeting, for the purpose of making, ordaining, and establishing such bye-laws, ordinances, and regulations for the good management of the affairs of the Corporation as they shall deem necessary, and for the purpose of choosing thirteen Directors, being stockholders and members of the Corporation, under and in pursuance of the rules and regulations hereinafter made and provided; which Directors so chosen shall serve until the first annual meeting for choice of Directors, and shall have full power and authority to manage the concerns of the said Corporation, and shall commence the operations of the said Company, subject nevertheless to the rules and regulations hereinafter made and provided.

4. There shall be a general meeting of the stockholders and members of the said Corporation, to be annually holden on the second Tuesday in May in each and every year, at the City of Saint John; at which annual meeting there shall be chosen, by a majority thereof, thirteen Directors, who shall continue in office for one year, or until others are chosen in their room; in the choice of which the stockholders and members of the said Corporation shall vote according to the rules hereinafter mentioned; and the Directors, when chosen, shall, at their first meeting after their election, choose out of their number a President;

provided always, that seven of the Directors in office shall be re-elected at such annual meeting, for the next succeeding twelve months, of which the President shall always be one.

5. The Directors for the time being shall have power to appoint such officers, clerks, and servants as they or the major part of them shall think necessary for executing the business of the said Corporation, and shall allow them such compensation for their respective services as to them shall appear reasonable and proper; all which, together with the expenses for building reservoirs, conductors, pipes, and all other contingencies, shall be defrayed out of the funds of the Corporation; and the said Directors shall likewise exercise such other powers and authorities for the well regulating the affairs of the said Corporation as shall be prescribed by the bye-laws and regulations of the same.

6. Not less than seven Directors shall constitute a board for the transaction of business, of which the President shall always be one, excepting in cases of sickness or necessary absence, in which case the Directors present may choose one of their Board as Chairman in his stead; the President shall vote at the Board as a Director, and in case of there being an equal number of votes for and against any question before them, the President or Chairman shall have a casting vote.

7. No Director shall be entitled to any salary or emolument for his services, but the stockholders and members of the said Corporation may make such compensation to the President as to them shall appear reasonable and proper.

8. No person shall be eligible as a Director unless such person is a stockholder, and holding not less than twenty shares of the capital or stock of the said Corporation.

9. The number of votes to which each proprietor of shares in the said Corporation, holding one or more shares in the said Company, shall be entitled on every occasion when in conformity with the provisions of this Act the votes of the members of the said Corporation shall be given, shall be in the proportion

following, that is to say : For one share and not more than two, one vote ; for every two shares above two and not exceeding ten, one vote, making five votes for ten shares ; for every four shares above ten and not exceeding thirty, one vote, making ten votes for thirty shares ; for every six shares above thirty and not exceeding sixty, one vote, making fifteen votes for sixty shares ; for every eight shares above sixty and not exceeding one hundred, one vote, making twenty votes for one hundred shares ; for every ten shares above one hundred shares and not exceeding one hundred and fifty, one vote, making twenty-five votes for one hundred and fifty shares ; but no person or persons, co-partnership, body politic or corporate, being a member or members of the said Company, shall be entitled to a greater number than twenty-five votes.

10. All stockholders resident within this Province or elsewhere may vote by proxy, provided such proxy be a stockholder, and do produce sufficient authority from his constituent or constituents so to act.

11. No member or corporate body during the first twelve months, to be accounted from and after the passing of this Act, shall be entitled to hold or subscribe for more than fifty shares of the said capital or stock, except the Corporation of the City of Saint John, who shall be allowed to take up the whole or any part thereof, if demanded within one calendar month after the passing of this Act ; and no person or persons, body politic or corporate, shall, until the expiration of one calendar month from the passing of this Act, be allowed to take or subscribe for any shares of the said capital or stock, unless the said Corporation of the said City of Saint John shall have sooner taken up the number of shares intended to be taken by the same Corporation, or declared its option not to take any.

12. The Directors be and they are hereby authorized to fill up any vacancy that shall be occasioned in the Board by the death, resignation, or absence from the Province for three months of any of its members ; but in the case of the removal of a Di-

rector by the stockholders for misconduct or mal-administration, his place shall be filled up by the said stockholders ; and the person so chosen by the Directors or stockholders shall serve until the next succeeding annual meeting of the stockholders.

13. The shares of the capital or stock shall be assignable and transferable according to the rules and regulations that may be established in that behalf, but no assignment or transfer shall be valid or effectual unless such assignment or transfer shall be entered and registered in a book to be kept by the Directors for that purpose, nor until such person or persons so making the same, shall previously discharge all debts actually due and payable by him to the said Corporation ; in no case shall any fractional part of a share, or other than a complete share or shares, be assignable or transferable ; whenever any stockholder shall transfer in manner aforesaid all his stock or shares in the said Company to any other person or persons whatsoever, such stockholder shall cease to be a member of the said Corporation.

14. The Directors shall make half yearly or yearly dividends, as may to them appear most proper, of all the profits, rents, premiums, and interest of the said Corporation, payable at such time and place as the Directors shall appoint, of which they shall give thirty days previous notice in two of the newspapers published in the City of Saint John.

15. The said Corporation shall have full power and authority to draw water from, erect reservoirs on, and to carry pipes or conductors through (when such shall be deemed absolutely necessary for the conveyance of water to the City by the said Corporation) the private property of individuals whose land may lie at the source or in the line the said Corporation shall think it expedient to convey the water from, or through which it may be necessary to carry such pipes or conductors, or erect such reservoirs ; provided always, that no such water be drawn, reservoirs erected, or pipes or conductors carried from, upon, or through the private property of any person without a reasonable and proper compensation being allowed and paid for the use and con-

venience of the same, and for any damage sustained by the operations of the said Corporation, to be agreed upon by the said Corporation and the respective owners of such private property; and in case of disagreement between the said Corporation and the said owners, or any of them, then such compensation shall be determined by three arbitrators, one to be chosen by the said Corporation, and one by the owner or owners of the private property in question, which two arbitrators so chosen shall choose the third arbitrator, and in case of their not agreeing in such choice within ten days after their appointment, then and in such case it shall and may be lawful for the Lieutenant Governor or Commander in Chief for the time being, upon application of the said Corporation, to appoint the third arbitrator, and the award of the said arbitrators, or any two of them, shall be final and conclusive in the matters referred to them; and in case any of the said owners of such private property shall decline making any such agreement, or appointing such arbitrator, then and in every such case, the said Corporation may make application to the Supreme Court of this Province, stating the grounds of such application, and such Court is hereby empowered and required from time to time, upon such application, to issue a writ or warrant directed to the Sheriff of the City and County of Saint John, or in case of his being a party interested, then to the Coroner of the said City and County, and in case of the said Sheriff and Coroner being both interested, then to some person or persons who may be disinterested, commanding such Sheriff, Coroner, person or persons, as the case may be, to summon and empanel a jury of twelve freeholders within the said City and County who may be altogether disinterested, which jury upon their oaths (all which oaths, as well as the oaths to be taken by any person or persons who shall be called upon to give evidence, the officer or person or persons summoning such jury is hereby empowered to administer) inquire of, assess, and ascertain the distinct sum or sums of money, or annual rent to be paid for the use and convenience of such private property, or the indemnification to be made for the

damage that may or shall be sustained as aforesaid, and the inquisition, award, or verdict of such jury shall be returned and filed in the office of the Clerk of the Pleas in the said Supreme Court, and shall be final and conclusive between the parties, and the costs and expenses of these proceedings, to be taxed and allowed by the said Supreme Court, shall be borne by the said Corporation.

16. It shall and may be lawful for the said Company, at a proper and convenient depth under the surface of each and every of the roads and streets leading into and through the said City and its vicinity, to lay down, set, and place such and so many pipes, leaders, and conduits for the said water, as they shall find to be necessary for conveying it to any or every dwelling house in the said City or its vicinity, and from time to time, as often as the said Company shall think proper, to lay down such pipes, leaders, and conduits, or shall have occasion to alter, amend, or repair the same; it shall also be lawful for the said Company to break up and open any part whatsoever of the said roads and streets, or of the covering, pavement, or sidewalks thereof, and the same to keep open and uncovered during the time necessary for the said purposes; provided always, that before the said Company shall break up or open any such road or street, they shall give previous notice of their intention so to do to the Mayor, Aldermen, and Commonalty of the said City, and shall receive their permission in writing therefor, and not otherwise; and provided also, that the said Company shall and do, at their own proper costs and charges, and to the satisfaction of the said Mayor, Aldermen, and Commonalty, and without unnecessary delay, repair and amend the said roads and streets in every part where they shall be so broken up and opened as aforesaid, and restore the covering, pavement, and sidewalks thereof respectively, to the condition in which they were before breaking up or opening the same.

17. If the said Company shall not repair the said roads or streets, or any of them, so broken up, to the satisfaction of the said Mayor, Aldermen, and Commonalty, it shall be lawful for the

said Mayor, Aldermen, and Commonalty to cause the same to be repaired, and to sue for and recover the expense incurred therein from the said Company in the Supreme Court of the Province, or in case the sum demanded shall not exceed five pounds, then before any Justice of the Peace for the said City and County not being an Alderman of the said City, such Justice to proceed in the manner directed in the Act for the more easy and speedy recovery of small debts.

18. The said Company do and shall, in every street or road through which the said pipes shall be laid, make and provide proper vents and openings for supplying water whenever fires shall happen in the said City or the vicinity thereof, and do and shall make such vents and openings in such places, and at such distances from each other as the Mayor, Aldermen, and Commonalty of the said City, in Common Council convened, shall from time to time direct and appoint, under penalty of forfeiting the privileges and immunities granted in and by this Act; provided always, that the said Mayor, Aldermen, and Commonalty shall pay any additional expense that may be incurred by the making and maintaining of such vents and openings for supplying water in cases of fire.

19. In case the Mayor, Aldermen, and Commonalty of the said City of Saint John shall take up and subscribe for the whole of the said capital or stock within one calendar month after the passing of this Act, as provided for in the eleventh section of this Act, then and in such case the establishment of the said Corporation by the name of "The Saint John Water Company" shall not take effect, and all the provisions hereinbefore contained relating to the establishment, constitution, and regulation of the said Company shall be void and of no effect; and then and in such case also the said Mayor, Aldermen, and Commonalty of the City of Saint John, shall have and exercise all the powers, privileges, and authorities, and be subject to all the regulations and provisions in the fifteenth, sixteenth, seventeenth, and eighteenth sections of this Act mentioned and contained, so far as

the same may be applicable to the said Mayor, Aldermen, and Commonalty; and then and in such case also it shall be the duty of the said Mayor, Aldermen, and Commonalty, and they are hereby required forthwith to proceed to carry into effect the intention of this Act, by supplying the said City and its vicinity with water in the manner herein contemplated.

IV WILLIAM IV.—CHAPTER 40.

AN ACT TO REVIVE AND AMEND AN ACT TO INCORPORATE SUNDRY PERSONS BY THE NAME OF THE SAINT JOHN WATER COMPANY.

Section.

1. What Act in force, &c.
2. Banking not permitted by Company.

Section.

3. Time for paying first instalment enlarged.

Passed 22nd March, 1834.

BE IT ENACTED, &c.—1. An Act made and passed in the second year of His present Majesty's Reign, intituled *An Act to incorporate sundry persons by the name of the Saint John Water Company*, be and the same is hereby declared to be in full force and effect, except as hereby altered and amended.

2. The said Company or Corporation shall not directly or indirectly deal or trade in buying or selling gold and silver coins, or bullion, or bills of exchange, or other negotiable instruments, or any goods, wares, merchandise, or commodities whatsoever, or deal in the lending of money, or in bills of exchange, or other negotiable instruments, by way of discount or otherwise, engage in any banking operations whatsoever.

3. The time for paying in five per cent. of the capital stock of the said Company shall be and the same is hereby extended to two years after the passing of this Act instead of twelve months, as required by the second Section of the said Act.

II VICTORIA. — CHAPTER 33.

AN ACT TO EXPLAIN AND AMEND AN ACT INTITULED AN ACT TO INCORPORATE SUNDRY PERSONS BY THE NAME OF THE SAINT JOHN WATER COMPANY.

Section.

1. Part of what Section of what Act repealed.
2. Stock paid in declared valid.
3. Proceedings of Corporation, what deemed legal.

Section.

4. Shares, when forfeited.
5. Bye-laws, by whom made.
6. When stockholder not required to answer calls.

Passed 23rd March, 1839.

WHEREAS by an Act made and passed in the second year of the Reign of His late Majesty King William the Fourth, intituled, *An Act to incorporate sundry persons by the name of the Saint John Water Company*, and by a certain other Act made and passed in the fourth year of the same Reign, intituled *An Act to revive and amend an Act to incorporate sundry persons by the name of the Saint John Water Company*, authority was given to establish the said Company agreeably to the several provisions of the said Acts, and the same has been established and is now in full operation, but doubts are entertained whether some of the terms of the said Acts have been strictly complied with, and thereby the permanence of this useful undertaking may be greatly endangered; for remedy whereof —

Be it therefore enacted, &c. — 1. So much of the second Section of the said first mentioned Act as declares that the capital stock of the said Corporation shall consist of current gold and silver coins of the Province, and as requires the five per cent. thereof to be paid in current gold and silver coins of the Province, be and the same is hereby repealed.

2. Such part of the said capital stock as has been actually and *bona fide* paid in to the satisfaction of the President and Directors of the said Company for the time being, by any stockholder, as a per centage upon, or part payment of his share or shares in

the said capital stock, whether the same was paid in gold and silver coins or otherwise, shall be deemed and adjudged and is hereby declared to be a good and sufficient payment of such part of such capital stock, according to the true intent and meaning of the said Acts.

3. It is hereby declared, that no part of the proceedings of any President and Directors of the said Company, or of any meeting of the stockholders thereof, since the passing of the said Acts, shall be deemed and adjudged as illegal, unauthorized, or contrary to the intent and meaning of the said Acts, or either of them, by reason of any irregularity that may have arisen in the first general meeting of the stockholders of the said Company, or in the election of the first Directors of the said Company, or in the election of the first President of the said Company, or by reason of the said stockholders not having heretofore made any bye-laws, ordinances, and regulations for the good management of the affairs of the said Corporation, or by reason of such part of the stock that has been paid not having been paid in gold and silver coins; and that all proceedings heretofore had and done, and all transfers of shares in the said capital stock of the said Company under the said Act heretofore made and done in pursuance of and according to any regulations made by any President and Directors of the said Company for the time being, since the first meeting of the stockholders, and since the election of the first Directors of the said Company, shall be deemed and are hereby declared as good and valid to all intents and purposes as if the said first meeting of the said stockholders, and the election of the first Directors and President of the said Company, had been in all respects strictly according to the directions of the said Acts, and as if bye-laws had been made by the stockholders for the regulation and management of the affairs of the said Corporation in pursuance of the power vested in them for that purpose.

4. In any case where default has been made before the passing of this Act in payment of any part of the residue of the cap-

ital stock of the said Company, which has been heretofore by the President and Directors for the time being of the said Company required to be paid, and which remains still unpaid at the time of passing this Act, every share upon which such default shall have been so made, shall stand and become absolutely forfeited to the said Corporation, unless the amount so required to be paid thereon shall be fully paid and satisfied to the President and Directors of the said Company for the time being, within two months after the passing of this Act, or within such further time as the said President and Directors of the said Company for the time being, or the major part of them, may consent to give for the payment thereof, and in case of such forfeiture, the said President and Directors of the said Company for the time being, or the major part of them, shall, at any time within one month after such forfeiture, have full power and authority, if they see fit, to proceed to sell every such share so forfeited at auction, first giving one month's notice in two or more of the public newspapers in the said Province of such sale, and the proceeds thereof to be applied to the service and use of the said Company.

5. It shall and may be lawful for the President and Directors for the time being, or the major part of them, from time to time, when they or the major part of them see fit, to call a general meeting of the stockholders of the said Company, by giving one month's notice of the time or place of such meeting in two or more of the public newspapers published in Saint John; and at such general meeting so called, and also at any annual meeting of the said stockholders held pursuant to the provisions of the said Acts, it shall be lawful for the said stockholders of the said Company, or the major part of them then present, and they are hereby authorized and empowered to make all such bye-laws, ordinances, and regulations for the good management of the affairs of the said Corporation, as they are authorized and empowered to make by the first section of the said first mentioned Act, and also in like manner, from time to time, to alter, annul,

add to, or amend the same ; and in such bye-laws, ordinances, and regulations, the said stockholders shall have full power and authority to make such provisions as they or the major part of them then present shall see fit, for securing the payment by the shareholders and their assignees of the residue of the capital stock of the said Company not heretofore called for by the President and Directors of the said Company, or any part thereof, according as the same may be from time to time hereafter required by the President and Directors for the time being of the said Company, in manner and according to the directions of the said Acts, and also to provide for the forfeiture of the shares in case of default in said payment ; and all such bye laws, ordinances, and regulations so to be made, shall be as binding upon the stockholders and their assignees for the time being, so long as the same remain in force, as if they were enacted by this or any other Act of the General Assembly of this Province.

6. Provided always, that nothing herein contained shall be construed to authorize the said Company to call upon any stockholder for any instalment after notice being given to the said Company of the abandonment of any stock held by such stockholder.

XII VICTORIA.— CHAPTER 51.

AN ACT TO INCREASE THE CAPITAL STOCK OF THE SAINT JOHN WATER COMPANY, AND TO PROVIDE A MORE EFFICIENT SUPPLY OF WATER IN THE CITY OF SAINT JOHN.

Section.

1. Increase of Capital.
2. Additional shares, how divided.
3. Repealed.
4. Shares, when may be sold.
5. Capital, how applied.
6. Private property, how entered on, &c.
7. When meeting called for choosing Directors.

Section.

8. How made.
9. Officers' continuance in office.
10. Obligations of Company, when may be cancelled.
11. Water tanks, &c., for poor.
12. Dividends.

Passed 14th April, 1849.

WHEREAS it has become necessary to increase the capital stock of the Saint John Water Company, and to make provision for a greater and more efficient supply of water in the City of Saint John;

Be it therefore enacted, &c.—1. The shareholders of the Saint John Water Company shall be and are hereby authorized to increase the capital stock of the said Company to an amount not exceeding ten thousand pounds, which additional stock shall be divided into shares of five pounds each.

2. The additional shares in the capital stock of the said Company shall be divided among the present shareholders in the said Company, in the proportion of one additional share to every two shares held by such shareholders; and if any of the said shareholders shall neglect or refuse to accept such additional shares within thirty days after the passing of this Act, then such additional shares so refused or neglected to be taken up shall be open to public subscription, or may be disposed of by the Directors of the said Company in such manner as they may deem advisable.

3. *Twelve and one half per cent. of the amount of each of such additional shares shall be paid to the Treasurer of the said

*Repealed by 13 Vic., c. 7, s. 1.

Company, within one year after the passing of this Act, and that the residue of each of the said additional shares shall be paid by instalments of twelve and one half per cent. to the Treasurer of the said Company, at intervals of six months, after the payment of the first instalment, until the whole amount of each of such additional shares shall be fully paid up.

4. In case default be made in payment of all or any of the instalments in the said additional shares, or any of them, it shall and may be lawful for the Directors of the said Company for the time being, within thirty days after any such default, forthwith to sell and dispose of any of the said additional shares on which such default may be made, at their discretion, to the best advantage, to any purchaser or purchasers of the same; and any instalment or instalments which previously to such default may have been paid on such additional shares, shall be forfeited to and become the property of the said Company.

5. The additional stock of the said Company shall be expended and applied, as the same is paid up, in procuring a more efficient supply of water by the said Company, and in the erection of all necessary works, buildings, reservoirs, and machinery therewith connected, and in laying down pipes and conduits throughout that part of the City of Saint John, on the eastern part of the Harbor of Saint John, in such manner and to such extent as will furnish the inhabitants thereof with a more efficient supply of water.

6. For the purpose of enabling the said Company to procure a more efficient supply of water, they, the said Company, shall be and are hereby authorized and empowered, by their agents, servants, and workmen, to enter upon private property for the purpose of procuring such supply, and there build and set up dams or embankments on any brook, stream, lake, or pond, for the purpose of creating artificial ponds or reservoirs, and by such dams or embankments may cause the flowage of such private property, and continue such flowage so long as they, the said Company, shall see fit; and they, the said Company, shall have

full power and authority to draw water from such artificial ponds or reservoirs exclusively, and to carry pipes or conductors through the private property of individuals, as may be necessary for the conveyance of the said water to the City of Saint John; provided always, that no such dams or embankments be built or set up, artificial ponds or reservoirs made, flowage created, or pipes or conductors laid upon or through the private property of any person, without a reasonable and proper compensation being allowed and paid for the use and convenience of the same, and for all damage sustained by the operations or works of the said Company, to be agreed upon by the said Company and the respective owners of such private property, and in case of disagreement between the said Company and the owners of the said private property, or any of them, then the amount of such compensation shall be settled and determined in the manner and form prescribed by an Act made and passed in the second year of the Reign of His late Majesty William the Fourth, intituled *An Act to incorporate sundry persons by the name of the Saint John Water Company*, or in such manner and form and by such ways and means as may be prescribed by any Act which may be passed at the present or any session of the General Assembly of this Province; and for all damage the owner or owners of any mills or other manufacturing establishment may sustain, for or by reason of any of the operations of such Company, the direct and indirect damage, as well present as future, shall be fully considered, and on any investigation under this Act for ascertaining the same, any such owner or owners may be examined under oath touching and concerning such injury or damage.

7. So soon as the first instalment of twelve and one half per cent. shall have been fully paid on all the additional shares in the said Company as hereinbefore prescribed, then it shall be the duty of the Directors of the said Company, and they are hereby required, to call a general meeting of all the shareholders in the said Company, by giving public notice in one or more of the newspapers published in the City of Saint John, fourteen

days previous to such meeting, for the purpose of choosing five Directors from among the shareholders of the said Company, in manner prescribed by law, to manage the business and affairs of the said Company, which said five Directors shall remain in office until the next annual meeting of the said Company, or until others are chosen in their stead, and no more than five Directors shall, after the first of such elections, be chosen to manage the business of the said Company.

8. In the choice of such five Directors the shareholders of the said Company shall vote according to the rules and regulations prescribed by the Act of Assembly hereinbefore mentioned for incorporating the said Company; and the said five Directors, when so chosen, shall, at their first meeting after their election, choose a President out of their number; provided always, that three Directors shall constitute a Board for the transaction of business, of which the President shall always be one, except in cases of sickness or necessary absence, in which case the Directors present may choose one of their number Chairman in his stead, but that neither the said President nor Chairman, for the time being, shall vote as a Director, but in case of an equal number of votes for and against any question before such Board, the President or Chairman for the time being shall have a casting vote.

9. The President, Directors, and officers of the said Company shall continue in office until the first election of five Directors in the manner and at the time hereinbefore prescribed, and no longer; and in case the said additional shares in the said Company shall not be taken up and the first instalment thereon be duly paid as herein provided, then the present Directors of the said Company shall continue in office until the next annual meeting of the Company after such default, or until others shall be chosen in their stead.

10. And whereas divers persons, on behalf of the said Saint John Water Company, are now held and firmly bound unto our Lady the Queen, by their certain bonds or obligations, for di-

vers sums of money amounting in the whole to the sum of five thousand pounds, which said sum of five thousand pounds was lent to the said Saint John Water Company by the Province of New Brunswick, and has been expended by the said Company in procuring and furnishing a partial supply of water to the City of Saint John, which has been highly beneficial on many occasions in extinguishing and checking many extensive conflagrations in the said city; and whereas heavy losses have been prevented by such supply of water, and it is highly desirable that the said Company should be aided and encouraged in their endeavor to procure a more extensive supply of water for the said city, as well for the preservation of the public health and the prevention of fires as for the cleanliness and comfort which will thereby be promoted: If the said additional stock in the said Saint John Water Company, hereby authorized and created, shall be actually paid to the Treasurer of the said Company within five years from the passing of this Act, and shall be wholly, or for the major part, appropriated in carrying out the purposes of this Act, and proof of payment of the same and the appropriation of the whole, or the major part thereof, for the purposes aforesaid, shall be made to the satisfaction of His Excellency the Lieutenant Governor or Officer administering the Government of the Province for the time being, and Her Majesty's Executive Council, then it shall and may be lawful for the said Lieutenant Governor or Officer administering the Government to cancel the said bonds or obligations hereinbefore mentioned, and deliver up the same so cancelled to the obligors therein mentioned, and to cancel and release all claims thereon, either for principal and interest, to such obligors, so that no claim shall thereafter be had either against the said Company or the said obligors for the said sum of five thousand pounds, or any part thereof, or for all or any interest on the same, but the same shall be wholly satisfied, cancelled, and discharged forever thereafter.

11. For the purpose of furnishing to the poor of the City of

Saint John a gratuitous supply of water, if the Corporation of the City of Saint John shall erect or cause to be erected within the said City, in such places as the Mayor, Aldermen, and Commonalty of the said City may deem most convenient and suitable, tanks, fountains, or hydrants, not exceeding six in number, the said Water Company shall, if tanks are constructed, fill with water such tanks once in every day for the free use of the poor of the said City; and if fountains or hydrants, then shall for two hours in each day furnish a free full flow of water through such fountains or hydrants for the like use: which tanks, fountains, or hydrants shall at all times be kept in repair and in good working order by the said Corporation of the said City; and should the said Corporation of the said City deem it expedient to erect or build a greater number of tanks, fountains, or hydrants than six, then the said Water Company shall be bound to furnish a full supply of water for such additional tanks, fountains, and hydrants, for the purpose aforesaid, on payment of such sum or sums of money as may be agreed and contracted for by the Corporation of the said City with the said Water Company.

12. In order to encourage subscription to the additional stock hereby created, the subscribers for such additional stock so created under and by virtue of this Act, shall from time to time, out of the net profits of the said Company, be entitled to receive a dividend of six per centum per annum upon such new stock from the date of the payment of such stock respectively, before any division of the profits of the said Company shall be applicable to the original stock heretofore created; but no dividend exceeding six per centum shall be payable on such new stock until the proprietors of such original stock shall receive the like sum of six per centum per annum on such stock from the time of the passing of this Act, and when the net profits of said Company shall be more than sufficient to pay six per centum on both stocks, then any surplus of such profits shall be divided *pro rata* on all the stock of the said Company without distinction.

XIII VICTORIA.—CHAPTER 6.

AN ACT TO AUTHORIZE THE CORPORATION OF THE CITY OF SAINT JOHN TO BECOME SHAREHOLDERS IN THE ADDITIONAL STOCK OF THE SAINT JOHN WATER COMPANY.

Section.

1. City Corporation authorized to take up 900 of the additional shares in the Saint John Water Company.
2. City Corporation authorized to borrow money for the payment of the said shares.
3. Moneys borrowed to be paid to the Chamberlain, who is to render accounts on oath.
4. Debentures to draw interest, payable by the Chamberlain.
5. City Corporation authorized to make an annual assessment of £250, and expenses, on eastern side harbor.

Section.

6. Money assessed and accruing from the shares of stock to be applied in discharge of interest and principal of money borrowed. Debentures to be called in by public notice.
7. After payment of the loans dividends to be applied to the fire department.
8. Shares of stock not to be liable to seizure for Corporation debts.
9. Act 9th Vic., c. 29, sec. 3, not to affect this Act.

Passed 11th April, 1850.

WHEREAS by an Act of Assembly made and passed in the twelfth year of the Reign of Her present Majesty Queen Victoria, intituled "An Act to increase the Capital Stock of the Saint John Water Company, and to provide a more efficient supply of Water in the City of Saint John," authority is given to the shareholders of the said Company to increase the capital stock to an amount not exceeding ten thousand pounds, such additional stock to be divided into shares of five pounds each; and whereas it is deemed advisable to authorize the Mayor, Aldermen, and Commonalty of the City of Saint John to take up and subscribe for a portion of the said additional stock, and to raise money for that purpose by assessment, in the manner hereinafter provided;

1. Be it therefore enacted by the Lieutenant Governor, Legislative Council, and Assembly, that it shall and may be lawful for the said Mayor, Aldermen, and Commonalty of the City of Saint John, if they shall think fit so to do, from time to time to subscribe for and take up and become shareholders and proprietors of such and so many of the said additional shares of the said capital stock of the said Saint John Water Company, as the

Which said Debentures shall be signed by the Mayor for the time being of the said City, and shall be sealed with the common seal of the said Corporation, and shall also be countersigned by the Common Clerk for the time being of the said City, and shall be respectively numbered according to the time in which

the same may be made and issued, and a memorandum thereof shall be duly entered by the Common Clerk in the Minutes of the Common Council.

3. And be it enacted, That the moneys so authorized to be borrowed shall, from time to time, be paid to and received by the Chamberlain of the said City, and shall be paid out by him from time to time when required by the order of the Common Council, in such sum or sums as may be required for the purposes of this Act; and the said Chamberlain shall, whenever thereunto required by order of the Common Council, render a just and true account, and on oath if required, of the sums of money received and paid by him on this account, separate and distinct from his other accounts.

4. And be it enacted, That the holders of the said Debentures shall be entitled to receive interest for the same half yearly, not exceeding six per cent. per annum, to be paid by the Chamberlain of the said City out of the assessments and other moneys hereinafter mentioned, upon the orders of the Common Council to be made in the manner hereinafter mentioned.

5. And be it enacted, That it shall and may be lawful for the Common Council of the said City, and they are hereby authorized and required to make a rate and assessment upon that part of the said City lying on the eastern side of the harbor, of two hundred and fifty pounds in the present year, and a rate and assessment of a like sum in each and every succeeding year, besides the charges and expenses of assessing and collecting, for the purpose of paying for the said shares of stock so to be taken as aforesaid, and for discharging the principal and interest of the loans contracted for that purpose by virtue of this Act, until the same shall be paid off, the said several sums to be assessed, levied, collected, and paid in such proportions and in the same manner as any other county rates for public charges can or may be assessed, levied, collected, and paid under and by virtue of any Act or Acts, which at the time of making such assessments may be in force in the Province for assessing, levying, and collecting of

rates for public charges, and when collected shall be paid into the hands of the Chamberlain for the purposes of this Act.

6. And be it enacted, That the moneys to be assessed as aforesaid, and also all moneys, dividends, interest, and profits to arise or accrue or to be received in respect of the said shares of stock to be so taken as aforesaid, shall from time to time be applied, after discharging the half yearly interest due on the several principal sums mentioned in such Debentures, in payment of the said Debentures, in due order according to the number, beginning with the number one; and that the said Chamberlain shall, when and so often as he may be directed by the said Common Council, give one calendar month's public notice by advertisement in one of the newspapers published in the said City, for calling in such and so many of the said Debentures as the said Common Council are prepared to pay off, specifying the numbers in such advertisements, and the same, by and under such orders as aforesaid, shall pay off accordingly, and that from and after the expiration of such notice the interest on such Debentures shall cease.

7. And be it enacted, That after the amount of the said loans and interest shall be wholly paid off and discharged, all the dividends, interest, and profits to arise and accrue in respect of the said additional shares of stock, shall be applied towards the support and maintenance of the Fire Department of the said City, and to no other use or purpose whatsoever.

8. And be it enacted, That the said additional shares of stock so to be taken by the said Mayor, Aldermen, and Commonalty of the City of Saint John, shall not, nor shall any of them be liable to be taken, seized, attached, or sold for any debt of the Corporation of the said City, on any pretence whatsoever.

9. And be it enacted, That nothing in the third section of an Act passed in the ninth year of the Reign of Her present Majesty Queen Victoria, intituled *An Act relating to the Public Debt of the Corporation of the City of Saint John*, shall be construed to affect the provisions of this Act, or prevent the full operation hereof.

XIII VICTORIA. — CHAPTER 7.

AN ACT TO AMEND AN ACT TO INCREASE THE CAPITAL STOCK OF THE SAINT JOHN WATER COMPANY, AND TO PROVIDE A MORE EFFICIENT SUPPLY OF WATER IN THE CITY OF SAINT JOHN.

Section.

1. Repeal of Section of what Act.

Section.

2. Additional shares, how paid.

Passed 11th April, 1850.

WHEREAS in and by the third Section of an Act made and passed in the twelfth year of the Reign of Her present Majesty Queen Victoria, intituled *An Act to increase the Capital Stock of the Saint John Water Company, and to provide a more efficient supply of Water in the City of Saint John*, it was enacted that twelve and one half per cent. of the amount of each of such additional shares in the capital stock of the said Company should be paid to the Treasurer of the said Company within one year after the passing of the said Act, and the residue of each of the said additional shares should be paid by instalments of twelve and one half per cent. to the Treasurer of the said Company at intervals of six months after the payment of the first instalment, until the whole amount of each of such additional shares should be fully paid up; and whereas a part only of the additional shares in the capital stock of the said Company has as yet been subscribed, and it is expedient to extend the time for the payment of the first instalment of the twelve and one half per cent. upon such additional stock;

Be it therefore enacted, &c. — 1. The said recited Section of the said Act shall be and the same is hereby repealed.

2. Twelve and one half per cent. of the amount of each of such additional shares shall be paid to the Treasurer of the said Company within one year after the passing of this Act, at such time and in such place as the Directors of the said Company for the time being shall for that purpose appoint, of which thirty days public notice shall be given in two or more of the public

newspapers published in the City of Saint John; which said instalment the Directors of the said Company for the time being are hereby empowered and required to call in; and the residue of each of the said additional shares shall be paid by instalments of twelve and one half per cent. to the Treasurer of the said Company at intervals of one calendar month after payment of the first instalment, until the whole amount of each of such additional shares shall be fully paid up.

XV VICTORIA.—CHAPTER 71.

AN ACT FURTHER TO INCREASE THE CAPITAL STOCK OF THE SAINT JOHN WATER COMPANY.

Section.

1. Increase of Capital.
2. Repealed.
3. Repealed.

Section.

4. When shares may be sold.
5. Repealed.
6. Preference, what given, and to whom.

Passed 7th April, 1852.

WHEREAS it has become necessary to increase the capital stock of the Saint John Water Company, to enable said Company to carry out their designs in relation to the carrying water through all the streets in the said City by laying down pipes for that purpose;

Be it therefore enacted, &c.—1. The shareholders of the Saint John Water Company shall be and are hereby authorized to increase the capital stock of the said Company to an amount not exceeding ten thousand pounds, which additional stock shall be divided into shares of five pounds each.

2. *The additional shares in the capital stock of the said Company shall be divided among the present shareholders in the said Company in the proportion of one additional share to every two

* Repealed by 16 Vic., c. 53, s. 1.

shares held by such shareholders; and if any of the said shareholders shall neglect or refuse to accept such additional shares within thirty days after the passing of this Act, then such additional shares so refused or neglected to be taken up shall be open to public subscription or may be disposed of by the Directors of the said Company in such manner as they may deem advisable.

3. *Twelve and one half per centum of the amount of each of such additional shares shall be paid to the Treasurer of the said Company within one year after the passing of this Act, and the residue of each of said additional shares shall be paid by instalments of twelve and one half per centum to the Treasurer of the said Company at intervals of six months after the payment of the first instalment, until the whole amount of each of such additional shares shall be fully paid up.

4. In case default be made in payment of all or any of the instalments in the said additional shares, or any of them, it shall and may be lawful for the Directors of the said Company for the time being, within thirty days after any such default, forthwith to sell and dispose of any of the said additional shares on which such default may be made, at their discretion, to the best advantage, to any purchaser or purchasers of the same; and any instalment or instalments which previously to such default may have been paid on such additional shares shall be forfeited to and become the property of the said Company.

5. *The said additional stock of the said Company shall be expended and applied as the same is paid up, in laying down pipes and conduits throughout that part of the City of Saint John on the eastern part of the harbor of Saint John, in such manner and to such extent as will furnish the inhabitants thereof with a sufficient supply of water.

6. In order to encourage subscription to the additional stock hereby created, the subscribers for such additional stock created under and by virtue of this Act, shall, from time to time, out of

*Repealed by 16 Vic., c. 53, s. 1.

newspapers published in the City of Saint John ; which said instalment the Directors of the said Company for the time being are hereby empowered and required to call in ; and the residue of each of the said additional shares shall be paid by instalments of twelve and one half per cent. to the Treasurer of the said Company at intervals of one calendar month after payment of the first instalment, until the whole amount of each of such additional shares shall be fully paid up.

XV VICTORIA.—CHAPTER 71.

AN ACT FURTHER TO INCREASE THE CAPITAL STOCK OF THE SAINT JOHN WATER COMPANY.

Section.

1. Increase of Capital.
2. Repealed.
3. Repealed. •

Section.

4. When shares may be sold.
5. Repealed.
6. Preference, what given, and to whom.

Passed 7th April, 1852.

WHEREAS it has become necessary to increase the capital stock of the Saint John Water Company, to enable said Company to carry out their designs in relation to the carrying water through all the streets in the said City by laying down pipes for that purpose ;

Be it therefore enacted, &c.—1. The shareholders of the Saint John Water Company shall be and are hereby authorized to increase the capital stock of the said Company to an amount not exceeding ten thousand pounds, which additional stock shall be divided into shares of five pounds each.

2. *The additional shares in the capital stock of the said Company shall be divided among the present shareholders in the said Company in the proportion of one additional share to every two

* Repealed by 16 Vic., c. 53, s. 1.

shares held by such shareholders; and if any of the said shareholders shall neglect or refuse to accept such additional shares within thirty days after the passing of this Act, then such additional shares so refused or neglected to be taken up shall be open to public subscription or may be disposed of by the Directors of the said Company in such manner as they may deem advisable.

3. *Twelve and one half per centum of the amount of each of such additional shares shall be paid to the Treasurer of the said Company within one year after the passing of this Act, and the residue of each of said additional shares shall be paid by instalments of twelve and one half per centum to the Treasurer of the said Company at intervals of six months after the payment of the first instalment, until the whole amount of each of such additional shares shall be fully paid up.

4. In case default be made in payment of all or any of the instalments in the said additional shares, or any of them, it shall and may be lawful for the Directors of the said Company for the time being, within thirty days after any such default, forthwith to sell and dispose of any of the said additional shares on which such default may be made, at their discretion, to the best advantage, to any purchaser or purchasers of the same; and any instalment or instalments which previously to such default may have been paid on such additional shares shall be forfeited to and become the property of the said Company.

5. *The said additional stock of the said Company shall be expended and applied as the same is paid up, in laying down pipes and conduits throughout that part of the City of Saint John on the eastern part of the harbor of Saint John, in such manner and to such extent as will furnish the inhabitants thereof with a sufficient supply of water.

6. In order to encourage subscription to the additional stock hereby created, the subscribers for such additional stock created under and by virtue of this Act, shall, from time to time, out of

*Repealed by 16 Vic., c. 53, s. 1.

newspapers published in the City of Saint John; which said instalment the Directors of the said Company for the time being are hereby empowered and required to call in; and the residue of each of the said additional shares shall be paid by instalments of twelve and one half per cent. to the Treasurer of the said Company at intervals of one calendar month after payment of the first instalment, until the whole amount of each of such additional shares shall be fully paid up.

XV VICTORIA.—CHAPTER 71.

AN ACT FURTHER TO INCREASE THE CAPITAL STOCK OF THE SAINT JOHN WATER COMPANY.

Section.

1. Increase of Capital.
2. Repealed.
3. Repealed.

Section.

4. When shares may be sold.
5. Repealed.
6. Preference, what given, and to whom.

Passed 7th April, 1852.

WHEREAS it has become necessary to increase the capital stock of the Saint John Water Company, to enable said Company to carry out their designs in relation to the carrying water through all the streets in the said City by laying down pipes for that purpose;

Be it therefore enacted, &c.—1. The shareholders of the Saint John Water Company shall be and are hereby authorized to increase the capital stock of the said Company to an amount not exceeding ten thousand pounds, which additional stock shall be divided into shares of five pounds each.

2. *The additional shares in the capital stock of the said Company shall be divided among the present shareholders in the said Company in the proportion of one additional share to every two

*Repealed by 16 Vic., c. 53, s. 1.

shares held by such shareholders; and if any of the said shareholders shall neglect or refuse to accept such additional shares within thirty days after the passing of this Act, then such additional shares so refused or neglected to be taken up shall be open to public subscription or may be disposed of by the Directors of the said Company in such manner as they may deem advisable.

3. *Twelve and one half per centum of the amount of each of such additional shares shall be paid to the Treasurer of the said Company within one year after the passing of this Act, and the residue of each of said additional shares shall be paid by instalments of twelve and one half per centum to the Treasurer of the said Company at intervals of six months after the payment of the first instalment, until the whole amount of each of such additional shares shall be fully paid up.

4. In case default be made in payment of all or any of the instalments in the said additional shares, or any of them, it shall and may be lawful for the Directors of the said Company for the time being, within thirty days after any such default, forthwith to sell and dispose of any of the said additional shares on which such default may be made, at their discretion, to the best advantage, to any purchaser or purchasers of the same; and any instalment or instalments which previously to such default may have been paid on such additional shares shall be forfeited to and become the property of the said Company.

5. *The said additional stock of the said Company shall be expended and applied as the same is paid up, in laying down pipes and conduits throughout that part of the City of Saint John on the eastern part of the harbor of Saint John, in such manner and to such extent as will furnish the inhabitants thereof with a sufficient supply of water.

6. In order to encourage subscription to the additional stock hereby created, the subscribers for such additional stock created under and by virtue of this Act, shall, from time to time, out of

*Repealed by 16 Vic., c. 53, s. 1.

the net profits of the said Company, be entitled to receive a dividend of six per centum per annum upon such new stock respectively from the date of the payment of such stock, before any division of the profits of the said Company shall be applicable to the original stock created before the passing of an Act made and passed in the twelfth year of the Reign of Her present Majesty, intituled *An Act to increase the Capital Stock of the Saint John Water Company, and to provide a more efficient supply of Water in the City of Saint John*; but no dividend exceeding six per centum per annum shall be payable on such new stock until the proprietors of such original stock shall receive the like sum of six per centum per annum on such stock from the time of the passing of this Act; and when the net profits of the said Company shall be more than sufficient to pay six per centum per annum on the original stock and the additional stock created by the said hereinbefore recited Act, and the further additional stock created by this Act, then any surplus of such profits shall be divided *pro rata* on all the stock of the said Company without distinction.

XVI VICTORIA.—CHAPTER 53.

AN ACT TO AMEND AN ACT INTITULED "AN ACT FURTHER TO INCREASE THE CAPITAL STOCK OF THE SAINT JOHN WATER COMPANY."

Section.

1. What Section of what Act repealed.

Section.

2. Additional shares, when sold.

Passed 3rd May, 1853.

BE IT ENACTED, &c.—1. The second, third, and fifth sections of an Act made and passed in the fifteenth year of the Reign of Her present Majesty, intituled *An Act further to*

increase the Capital Stock of the Saint John Water Company, be and the same are hereby repealed.

2. The additional shares of stock in the said Company created by the Act above recited, shall be disposed of, wholly or in part, by the Directors, as they may see fit, and shall be paid to the Treasurer of the said Company in such parts and portions and at such time and times as the Directors of the said Company shall from time to time determine; and at least twenty days previous notice of payment being required for any one call shall be given in two or more of the newspapers published in the City of Saint John.

XVIII VICTORIA. — CHAPTER 5.

AN ACT FOR THE APPOINTMENT OF COMMISSIONERS OF SEWERAGE AND WATER SUPPLY FOR THAT PART OF THE CITY OF SAINT JOHN LYING ON THE EASTERN SIDE OF THE HARBOR, AND THE PARISH OF PORTLAND.

Section.

1. Commissioners, their appointment.
2. Duty; Employment of engineers; Plans and Estimates; Record.
3. Bargain for works of Saint John Water Company.
4. Ascertain means of a further supply of Water.

Section.

5. Also, improved Sewerage and Water Supply.
6. Report to Governor in Council.
7. Account of expenses, including Commissioners' fees.
8. Amount to be assessed in certain proportions.

Passed 3rd November, 1854.

BE IT ENACTED by the Lieutenant Governor, Legislative Council, and Assembly, as follows;

1. It shall be lawful for the Governor in Council to appoint three discreet and proper persons to be Commissioners for the purposes of this Act.

2. It shall be the duty of such Commissioners to employ competent Engineers, and to procure plans, and to make an estimate of the most approved method and probable cost of making and

laying down sufficient Sewers for that part of the City of Saint John lying on the eastern side of the harbor and such part or district of the Parish of Portland as in their opinion shall require the same, which part or district they shall define by marked lines upon the plan of the said Parish to be procured by them, or by a written description to be made and filed by them in the Office of the Common Clerk of the said City.

3. The said Commissioners shall ascertain and report to the Governor in Council whether and upon what terms the Saint John Water Company will dispose of the whole or any and what part of the property, works, and revenues of the said Company, for the purpose of further supplying that part of the City of Saint John lying on the eastern side of the harbor, and the said part or district of the Parish of Portland, with water.

4. In case the said Saint John Water Company shall agree to dispose of the property, works, and revenues of the said Company, upon such terms as shall be approved of by the said Commissioners, it shall be the duty of the said Commissioners to employ competent Engineers, and to procure plans, and to make an estimate of the expense of procuring a further and sufficient supply of water for the use of that part of the said City of Saint John lying on the eastern side of the harbor, and of the said district in the said Parish of Portland, as well with reference to the present inhabitants thereof as to the probable increase of population, specifying particularly in such plans and estimates the mode of procuring any additional supply which may be required from time to time beyond that at present in use.

5. The said Commissioners shall also procure information as to the best means of carrying into effect an improved system of Sewerage and Water Supply for that part of the said City and said district in the said Parish of Portland aforesaid, and prepare a Bill founded thereon to be laid before the Legislature at the next Session.

6. It shall be the duty of the said Commissioners, as early as conveniently may be, after procuring the necessary information

upon the matters aforesaid, to make a Report thereon to the Governor in Council, and to have the same printed and distributed for general information.

7. The said Commissioners shall make up and submit to the General Sessions of the Peace, to be held for the City and County of Saint John in March next, an account of all expenses incurred by them in carrying out this Act, in which expenses shall be included the fees of the said Commissioners at the rate of twenty shillings each per day for every day on which they shall be employed in the performance of their duties; such account to be verified by the oath of the said Commissioners, to be sworn before a Justice of the Peace of the said City and County.

8. The said Justices shall direct the amount of the said account to be assessed, levied, and collected upon that part of the City of Saint John lying on the eastern side of the harbor, and the Parish of Portland, and the inhabitants thereof respectively, in the same manner as other rates and taxes are assessed, levied, and collected, in the proportion of seven-eighths thereof on that part of the City of Saint John lying on the eastern side of the harbor, and one-eighth thereof on the Parish of Portland, the same, when collected, to be paid to the said Commissioners; provided always, that the amount so assessed shall not exceed the sum of five hundred pounds.

XVIII VICTORIA.—CHAPTER 38.

AN ACT TO PROVIDE FOR AN IMPROVED SYSTEM OF SEWERAGE AND WATER SUPPLY OF PART OF THE CITY OF SAINT JOHN AND PARISH OF PORTLAND IN THE COUNTY OF SAINT JOHN.

Section.

1. Commissioners, appointment of.
2. To be sworn.
3. Chairman, nomination of.
4. Compensation for services.
5. Meetings to be at least monthly.
6. Debentures for Water Company's stock; transfer thereupon; liabilities.
7. Extension of Water Works by the Commissioners.
8. Service pipes, at whose expense laid.
9. Proprietors or leaseholders, liability of; assessment; specialties.
10. Streets, how to be surveyed and levels established.
11. Sewers with branch drains to be laid.
12. Branch drains, expense of, how defrayed.
13. Assessment for expense of drains, when and in what proportion.
14. Right of entry on premises granted to Commissioners and their workmen.
15. Compensation for damages, how ascertained and paid.
16. Sewerage and Water Supply to new buildings, how obtained.
17. Superintendent of Sewers and Water, &c., appointment and pay of.
18. Superintendent's duty.
19. Cleansing and repairing of vaults and drains.

Section.

20. Vaults, drains, &c., power of Superintendent as to.
 21. Works for Sewerage or Water Supply deemed property of Commissioners.
 22. Assessments to bind property and parties; recovery.
 23. Distress warrants and sequestration orders, issue and execution of.
 24. Appropriation of income. Deficiency, how supplied.
 25. Estimate of deficiency, and assessment to be made.
 26. Accounts to be rendered annually, audited, and published.
 27. Protection of Commissioners and Officers.
 28. Compensation of Commissioners.
 29. Liability of Commissioners.
 30. Accounts of subordinate officers to be rendered.
 31. Proceedings on refusal.
 32. Proceedings on oath that an officer is about to abscond.
 33. Debentures, authority to issue, to pay for Water Stock.
 34. Amounts, where and when redeemable, authentication.
 35. Appropriation of surplus of income over expenditure.
- Schedule.

Passed 12th April, 1855.

WHEREAS an improved system of Sewerage and Water Supply would conduce to the health and comfort of the citizens and inhabitants of the City and Parish;

Be it enacted by the Lieutenant Governor, Legislative Council, and Assembly, as follows:

1. The Common Council of the City of Saint John shall forthwith appoint, and shall also have power to remove and re-appoint from time to time as may be expedient, two discreet and proper persons to be Commissioners for the purposes of this Act; and the General Sessions of the Peace for the City and County

of Saint John, or any Special Sessions for that purpose to be forthwith holden, shall in like manner appoint, and any General or Special Sessions for such purpose holden, shall also have power to remove and re-appoint from time to time one other discreet and proper person to be a Commissioner with the said other two Commissioners for the like purposes; neither of which said three Commissioners shall be a member of the said Common Council or Sessions.

2. The Commissioners, before entering on the duties of their office, shall severally take and subscribe an oath or affirmation before any Justice of the Peace of the said City and County, faithfully to perform the trust and duties required of them by this Act; which oath or affirmation such Justice is hereby authorized to administer, and he shall forthwith file the same in the office of the Common Clerk of the said City.

3. Whenever the said Common Council shall appoint or re-appoint the said two Commissioners, they shall at the same time nominate which of them shall be Chairman of the Board of Commissioners, whose duty shall be to preside at their meetings and exercise a general supervision of all proceedings under this Act.

4. The Chairman shall have a salary of four hundred pounds per annum, and each of the other Commissioners shall have one pound for each day's actual attendance on the duties of his office, but so as not to exceed the sum of fifty pounds for each Commissioner in any one year.

5. The Commissioners shall hold a general meeting for the transaction of business at least once in each month.

6. Immediately after the passing of this Act, the Commissioners shall make and issue to the holders of preference stock in the Saint John Water Company, Debentures in the form hereinafter provided, to the amount of fifteen thousand pounds, New Brunswick currency, at par, in satisfaction of such stock; and like Debentures to the amount of thirteen thousand nine hundred pounds, at the rate of ninety-two pounds, ten shillings for each one hundred pounds of stock, to the holders of the other

stock in the said Company, in satisfaction thereof; and thereupon the entire property, works, revenues, rights, and credits of the said Company, subject to the outstanding liabilities of the said Company, shall become vested in the said Commissioners and their successors, without any other act or conveyance whatever, with all the powers and privileges now held and enjoyed by the said Company under any law or laws of the Province, saving, however, to all and every person or persons, Company, or Corporation, all legal rights and remedies in law or equity, and all actions or suits now pending or hereafter to be brought against the said Company for or by reason of any malfeazance or misfeazance, or any act or thing heretofore done or committed, or for or by reason of any covenant, contract, or agreement heretofore made, which rights and remedies shall continue, and the actions and suits be brought, prosecuted, and ended as if this Act had not been passed; and the present stockholders therein shall be liable in law and equity for the liquidation and payment of all such claims and damages recovered, or to be hereafter recovered therefor; provided that such claims and damages shall not be levied on any present stockholders, on account of any preference stock, unless the value received by the holders of the original stock, on account of such original stock, shall be insufficient to defray the same; and it shall be lawful also for the said Commissioners to proceed for recovery of any arrears or moneys due to the said Company at the time of such transfer, or which may subsequently fall due under or by virtue of any contracts or agreements made with the said Company prior to such transfer, by distress and sale in manner provided by the twenty-second section of this Act.

7. Upon such transfer being made it shall be the duty of the Commissioners to extend the present Water Supply as far as they may deem it practicable or expedient, by carrying a sufficient main or mains to Latimer's Lake and Loch Lomond, or either of them, and by laying down good and sufficient main and service pipes in the several streets of the said City on the

east side of the harbor, not already supplied, and in and through the district in the Parish of Portland defined and described as follows, that is to say: "Beginning at the Aboideau where the City line strikes the line of the said Parish; thence southerly, easterly, and northerly along the Parish line to a point where the old Westmorland Road intersects the road running along the front of Walker Tisdale's stone cottage; thence along the last mentioned road, and a prolongation thereof, crossing the Marsh Creek to its north-western bank; thence westerly along the said bank to a point where a prolongation of the division line between the property of Messrs. Gilbert and Wright would strike the said Creek; thence north-westerly, following the said prolongation and line, to Wright Street (so called); thence westerly along the said Street to its termination in front of William Jack's property; thence in a straight line to the River Saint John, at the point where the Albion Mills now stand; and thence following the Parish line southerly and easterly in its various courses to the place of beginning;" as laid down and defined in a Plan signed by the Commissioners appointed under the Act of Assembly made and passed in the eighteenth year of Her present Majesty's Reign, intituled *An Act for the appointment of Commissioners of Sewerage and Water Supply for that part of the City of Saint John lying on the eastern side of the harbor and the Parish of Portland*, and filed in the Common Clerk's Office of the City of Saint John; when the same shall have been submitted to the Common Council and Sessions, and approved of by them.

8. The service pipes for water supply to houses, buildings, or establishments, shall be carried from the main to the side line of the street by the Commissioners at the public expense, when required so to do by notice in writing from the owner or owners of any house or building, and all beyond that distance at the expense of the owners or leaseholders for renewable terms of the premises so supplied.

9. *Wherever good and sufficient mains for the supply of

*Repealed by 28 Vic., c. 29, s. 1.

water to dwellings or other houses or establishments already exist, and likewise wherever the same shall be laid down and ready for the use of such dwellings, houses, or establishments within the said City, on the east side of the harbor, or the said District in the Parish of Portland, the owners in fee, or leaseholders for renewable terms of any lands or tenements through or along which such mains shall pass, shall, whether the water be taken or used on the premises or not, be respectively assessed for the same in each year, on a scale to be fixed and determined by the Commissioners in each year, due regard being had to the value, mode of occupation of the premises, and probable consumption of water in each case, except steam mills, manufactories, baths, and hotels, which shall be rated by agreement with the parties; in which scale the several lots or premises assessed, whether occupied or vacant, shall be numbered, and the rate assessed on each set down, and a copy of such assessment shall be filed by the Commissioners in the office of the Common Clerk of the said City within three months after their appointment as such Commissioners; and if any person shall think himself aggrieved by reason of such assessment, it shall be lawful for him in case the same shall be upon the premises situate in the said City, to appeal thereupon to the Common Council of the said City, and in case the assessment shall be upon premises in the said District of the said Parish of Portland, such appeal shall lie to the General Quarter Sessions of the said City and County, and the decision in either case shall be final, and the assessment be amended by the Commissioners in accordance with such order as may be therein made by the said Common Council or Sessions respectively; provided that all such appeals shall be made within thirty days after demand of the amount assessed shall have been made upon the party so appealing.

10. *The Commissioners shall employ a competent Engineer or Engineers to make surveys and plans of the streets within the City of Saint John, on the eastern side of the harbor, and in

*Repealed by 28 Vic., c. 28, s. 15.

that part of the Parish of Portland included under this Act, showing the surface of the streets as now existing, and the permanent levels to be hereafter made, which levels, when approved of by the Common Council and Sessions, shall be and for ever hereafter remain the permanent levels, and the said plans shall then be filed in the office of the Common Clerk in the City of Saint John, and a copy in the office of the Provincial Secretary, as public records of the same.

11. *The Commissioners shall, as soon as they may deem it practicable and expedient, construct and lay down through and along the several streets of the said City, on the eastern side of the harbor, and of the said district in the Parish of Portland, good and sufficient sewers with proper branch drains and pipes for such houses as they may from time to time deem fit to receive the same.

12. *All branch drains shall be laid down and fitted at the public expense from the main sewer to the line of the street, or in case of back sewerage to the rear line of each dwelling or tenement.

13. *As soon as good and sufficient main sewers are laid down and constructed, with proper branch drains for the several dwellings in any street of the said City or District aforesaid of the said Parish, the owners in fee, or leaseholders for renewable terms of the several lands and tenements through or along which such main sewers pass, shall, upon the same being ready for use, be respectively assessed for the same in each year on a scale to be fixed and determined by the Commissioners in each year in like manner and at the same time as the scale of water rates or assessments mentioned in the ninth section of this Act; which last mentioned scale or assessment shall be dealt with in like manner and be subject to the like appeals and amendment as the said scale of water rates.

14. In the laying down, construction, repairing, and alteration of any main, service pipes, drains, or sewers, under the pro-

* Repealed by 28 Vic., c. 28, s. 15.

visions of this Act, the Commissioners, or any or either of them, and their servants, agents, or workmen, shall have full power and they are authorized from time to time as occasion may require, to enter upon any lands and tenements in the said City, on the east side of the harbor, or in the district before mentioned in the Parish of Portland, whether inhabited or otherwise, and may remain thereon as long as they may deem requisite for the proper execution of the work, and may make all such excavations on the premises as may be expedient, and take up and remove any floors, timber, planks, or any walls, fences, or erections whatsoever, doing no unnecessary damage to the same, and carefully replacing the same upon the requisite work being performed; provided that no such entry shall be made between the hours of sunset and sunrise, nor without the permission of the owner or occupant, if resident on the premises, being first requested; but the refusal of such permission shall not prevent or delay the execution of the work.

15. In the event of any damage being done in the execution of the works contemplated by this Act, the Commissioners shall pay to the party sustaining the same such compensation as may be mutually agreed on; and in case the said parties and Commissioners should not agree, it shall be the duty of the Commissioners, at the request of such party, to apply to some one of Her Majesty's Justices of the Peace of the City and County of Saint John for a warrant, which warrant such Justice is hereby authorized and required to issue, commanding the sheriff or any constable in the said City and County to summon a jury of five disinterested freeholders or occupiers of land in the said City and County, to assess the damages to be paid to the party complaining; the jury shall be sworn, and the sheriff or his deputy shall preside at such inquest, and the verdict shall be binding as well on the party complaining as on the Commissioners, who shall within ten days thereafter pay to such party the amount assessed; the costs of such inquest to be taxed and allowed by the sheriff, or his deputy, at the same rate as on ordinary inquests

held before him, and shall be equally borne by the Commissioners and the party complaining, whose moiety thereof shall be deducted and retained out of the amount of damages assessed.

16. Persons intending to build or erect any dwelling house or building in any street of the said City on the east side of the harbor, or within the said district in the Parish of Portland, shall, before proceeding with the work, give notice in writing to the Commissioners of such intention, in order that proper sewerage and water supply may be provided under the direction of the Commissioners during the progress of the work; in case of neglect to give such notice, the party so neglecting shall forfeit and pay a penalty of five pounds, and the Commissioners shall forthwith proceed to execute the requisite works upon the premises at his expense, the costs of which, together with the said penalty, shall be recovered in the manner hereinafter provided.

17. The Commissioners may appoint, dismiss, re-appoint, and supply, from time to time, as may be requisite, a Superintendent of such sewers and water supply, and such other officers, servants, or agents as may appear necessary, with such reasonable compensation to each as shall appear to such Commissioners adequate and proper.

18. The Superintendent, under the direction of the Commissioners, to have the general supervision of all the sewers in the said City on the east side of the harbor, and in the said district of the Parish of Portland, as well when built as while in course of construction; and whenever any sewer is ordered to be constructed or repaired, shall ascertain its depth, breadth, mode of construction, and general direction, and insert those particulars in a book to be kept by him for that purpose at the office of the Commissioners, and under their inspection, and shall also insert therein all entries made into such sewer at any time or times thereafter.

19. Whenever any vault, privy, drain, or place of deposit of offal in the said City, on the east side of the harbor, or in the said district of the Parish of Portland, shall become offensive or

obstructed, the same shall be cleansed, and if need be, repaired, under such restrictions as the Commissioners may deem advisable, by the owner, occupant, or other person having charge of the premises, within a reasonable time after a notice in writing to that effect, given by the Superintendent or Commissioners, and in case of neglect or refusal to comply with such notice within six days thereafter, the Commissioners shall cause the same to be cleansed, repaired, or altered as they may see fit, at the expense of such owner, occupant, or person in charge, to be recovered as hereinafter provided.

20. All vaults, privies, cess pools, sewers, drains, and places of deposit of offal in the said City, on the eastern side of the harbor, and in the said district of the Parish of Portland, shall be subject to the control and inspection of the Superintendent aforesaid, who, as well as the Commissioners, their servants and workmen, shall have power, and they are hereby authorized to enter upon any lands and tenements for the purpose of inspecting and regulating the same, and to do all such work in and upon the premises as may be necessary for the proper construction and laying down of sufficient conduits and pipes to convey the contents of such vaults, privies, cess pools, sewers, or drains, into any common sewer.

21. All mains, hydrants, service pipes, main and branch drains, sewers, and other works, whether connected with sewerage or water supply of the said City, on the east side of the harbor, and in the said district in the Parish of Portland, to be deemed and taken to be the property of the Commissioners for all legal purposes; and all wilful or malicious injuries to the same shall be deemed felony.

22. The assessments to be made under and by virtue of the ninth and thirteenth sections of this Act, as well as the penalties which may from time to time be incurred under and by virtue of the sixteenth section of the same, shall be binding upon the respective lands and tenements specified in the scales of assessments prescribed by this Act, as well as on the respective owners

and parties therein mentioned, and the same shall be recovered with all incidental charges and expenses, by distress and sale of any goods and chattels found upon the premises; and in case of a deficiency of goods or chattels to satisfy the same, it shall be lawful for the said Commissioners to sequester and take and hold possession of the said premises until such deficiency be made good, and to collect, receive, and appropriate and apply the rents and profits of the said lands and premises in payment of the same; provided always, that no such distress or sequestration shall be made until the expiration of thirty days after a demand in writing, under the hands of the said Commissioners, or any two of them, of the moneys due in such case, shall have been served upon the owner, occupant, or person appearing to be in charge of the premises for the time being, and in case the same shall be unoccupied or vacant, then no such distress or sequestration shall be made until such demand as aforesaid shall have been advertised in one or more of the newspapers published in the said city for four consecutive weeks prior to such distress or sequestration.

23. For the recovery of assessment and rates, and of all arrearages, it shall be lawful for the Commissioners, or any two of them, to issue distress warrants and sequestration orders under their hands, from time to time, in such form as they may determine, briefly reciting therein the amount to be levied in each case, and that such previous demand has been made as hereinbefore prescribed; and all sheriffs and other peace officers are hereby required to execute such warrants and orders.

24. The moneys accruing from the annual income of water supply, together with all moneys arising from such local assessments and payments as are hereinbefore mentioned, shall be appropriated and applied by the Commissioners, in the first place, to the discharge of the current expenses incurred in the execution of the trusts and duties required by this Act, and, in the next place, towards the half-yearly dividends or payments of interest of the Debentures issued under the authority of this Act, and in

case the whole income shall not be sufficient for the purposes aforesaid, the deficiency shall be made good and supplied by general assessment on the inhabitants of the said city on the east side of the harbor, and of the said district in the Parish of Portland, as hereinafter prescribed; provided that no general assessment shall be made during the first five years after this Act going into operation, unless the same may be required to supply any deficiency to meet the half-yearly payments of interest on Debentures.

25. The Commissioners shall prepare a careful estimate in each year of the amount or sum of money which may be required to make good such deficiency, as hereinbefore mentioned, for the purposes set forth in the twenty-fourth section of this Act; and shall, on or before the thirty-first day of March in each year, send a requisition, in writing, under their hands, to the assessors of rates and taxes for the said city and for the said Parish of Portland, to assess the same in the following proportions; viz., Three-fourth parts thereof upon that part of the City of Saint John which lies on the east side of the harbor, and the remaining fourth part upon the said district of the Parish of Portland, in like manner as other rates and taxes; and it shall be the duty of the said assessors, and they are hereby required forthwith to comply with such requisition, and to proceed thereon in the same manner as upon ordinary warrants of assessment, and the amounts so assessed shall be levied and collected in like manner as other City and County taxes, and paid over by the several collectors to the Commissioner.

26. *The Commissioners shall keep regular books of account, in which shall be entered all moneys received and all disbursements made from time to time under the authority of this Act, and they shall annually submit a detailed account made up to the thirty-first of December, with proper vouchers, to two or more Auditors, to be appointed for that purpose by the Common Council of the said City, which said Auditors shall report there-

* Repealed by 25 Vic., c. 43, s. 2.

on to the Common Council, and furnish a copy of such report to the Commissioners, who shall publish the same for the information of the public on or before the thirty-first day of March in each year.

27. The Commissioners and their officers and servants shall have the like protection in the exercise of their respective offices and in the execution of their duties as Justices of the Peace now have under the laws of this Province.

28. The Auditors appointed under the twenty-sixth section of this Act shall receive from the Commissioners such remuneration as the Common Council may determine, not exceeding one pound each for each day's actual employment in the duty assigned them.

29. The Commissioners shall not be answerable the one for the other of them, nor for the acts, defaults, or misdoings of each other, and in case of any default or misapplication of the money received by any Commissioner by virtue of this Act, the whole real and personal estate of such Commissioners within the Province shall be liable for the same in like manner as for a debt due unto the Crown ; and immediately upon such default or misapplication being made known to the Lieutenant Governor or Commander in Chief of the Province for the time being, it shall be his duty to order a Writ of Extent to be thereon issued.

30. Every officer or servant employed by the Commissioners, shall, upon request by them so to do, account to them for all moneys received and all disbursements made by such officer or servant, on pain of immediate dismissal from his employment, and such other remedies to be pursued against him as may be legal.

31. If any officer or servant of the Commissioners shall refuse to account with them, and to produce and deliver up any vouchers, receipts, books, papers, goods, chattels, or moneys in his possession or power touching or concerning the said Commissioners, or the works to be carried on, or moneys to be raised by virtue of this Act, it shall be lawful for any Police Magistrate or any two Justices of the Peace for the said City and County, on complaint thereof made, to summon such offender to appear

before them, and if he shall disobey such summons the said Magistrate or Justice shall and may commit such offender to the common gaol of the said City and County, there to remain until he shall have accounted and delivered up such property as aforesaid.

32. If any one of the Commissioners or any one acting on their behalf, shall make oath before any Justice of the Peace of the said City and County, that he has reason to believe, and does believe, that any officer or servant of the Commissioners is about to abscond for the purpose of evading such accounting as aforesaid, such Justice shall immediately thereupon issue his warrant for bringing such officer or servant before any Police Magistrate or Justice aforesaid, who shall proceed thereon as is provided by the thirty-first section of this Act; provided that the person executing such warrant shall not keep such officer or servant in custody longer than thirty-six hours before bringing him before such Police Magistrate or Justice aforesaid.

33. For the purpose of raising the necessary funds to purchase the property of the said Water Company, and carrying into effect the works contemplated by this Act, the Commissioners are hereby authorized and empowered to make and issue from time to time, as they may deem expedient, Debentures in the form specified in Schedule A to this Act annexed, bearing interest at a rate not exceeding six per cent. per annum, payable half yearly, and redeemable at periods not exceeding forty years from the dates of the issuing of such scrip; provided that the whole amount of such Debentures shall not exceed the sum of seventy-five thousand pounds, currency of New Brunswick.

34. The Debentures shall be issued payable in sterling money of Great Britain, or in New Brunswick currency, as may be deemed advisable; they shall, if in currency, be redeemable with the coupons attached, at the office of the Commissioners in the City of Saint John, and if in sterling, at such banking house or office in London as the Commissioners shall from time to time appoint for that purpose; they shall be signed by all the Commissioners for the time being, and verified by their common seal

of office, which common seal the Commissioners are hereby empowered to have and use as often as occasion may require, bearing such device thereon as they may determine; the Debentures shall also be countersigned by the Chamberlain of the City of Saint John, numbered consecutively, beginning with number one, and shall be issued in such sums as may be thought desirable, not less than one hundred pounds if in sterling, or twenty-five pounds if in currency; provided that the coupons may be signed by one only of the said Commissioners.

35. The Commissioners shall have power, and they are hereby authorized to appropriate any surplus of income over the expenditure required for the current expenses of the Commission, and the half-yearly dividends on Debentures, to the payment of Bonds, or in funding such surplus in such way and manner as they may devise.

SCHEDULE A.

No. STERLING DEBENTURE.

£ Sterling transferable.

[L.S.] Under the authority of the Legislature of the Province of
New Brunswick.

The Commissioners of Sewerage and Water Supply of the City of Saint John and Parish of Portland, N. B., and their successors, do hereby promise to pay in London to the bearer hereof the sum of pounds sterling years from the date hereof, likewise the interest from the same date at the rate of per cent. per annum, to be paid half-yearly on the presentation of the proper coupons for the same, as hereunto annexed, on the day of and the day of in each year, in London.

IN TESTIMONY WHEREOF, we, the Commissioners of Sewerage and Water Supply aforesaid, by virtue of the authority vested in us by the Act of the General Assembly of the said Province, intituled "An Act, &c.," have hereunto set our hands and affixed our seal of office at the City of Saint John aforesaid, and the Chamberlain of the City of Saint John has countersigned the same this day of A. D. 18

A. B.)
C. D.) } *Commissioners.*
E. F.)

B. R., *Chamberlain of the City of Saint John.*

FORM OF COUPON.

PROVINCE OF NEW BRUNSWICK.

Debenture No. £ Sterling.

Pounds Sterling, payable at the Banking House of London, being
six months' interest on the above Debenture, due day of A. D. 18.

A. B. }
C. D. } *Commissioners.*
E. F. }

PROVINCE OF NEW BRUNSWICK.

No. £ N. B. Currency.

Under the authority of the Legislature of New Brunswick.

The Commissioners of Sewerage and Water Supply of the City of Saint John and Parish of Portland, N. B., promise to pay at their office in the said City, to the bearer hereof, the sum of pounds current money of New Brunswick years from the date hereof, likewise interest from the same date at the rate of per cent. per annum, to be paid half-yearly, on the presentation of the proper coupons for the same, as hereunto annexed, on the day of in each year at the said office.

IN TESTIMONY WHEREOF, &c. [*same as in foregoing form.*]

A. B. }
C. D. } *Commissioners.*
E. F. }

B. R., *Chamberlain of the City of Saint John.*

FORM OF COUPON.

PROVINCE OF NEW BRUNSWICK.

Debenture No. £ N. B. Currency.

Pounds N. B. currency, payable at the office of the Commissioners of Sewerage and Water Supply in the City of Saint John, N. B., being
six months' interest on the above Debenture, due day of A. D. 18

A. B. }
C. D. } *Commissioners, &c.*
E. F. }

XXI VICTORIA. — CHAPTER 7.

AN ACT AUTHORIZING THE COMMISSIONERS UNDER AN ACT TO PROVIDE FOR AN IMPROVED SYSTEM OF WATER SUPPLY AND SEWERAGE OF THE CITY OF SAINT JOHN AND PARISH OF PORTLAND TO INCREASE THE AMOUNT OF ISSUE OF DEBENTURES, AND MAKING OTHER PROVISIONS FOR THE BETTER CARRYING OUT THE OBJECTS OF THAT ACT.

Section.

1. Authority for further issue of Debentures.
2. Fire Hydrants, placing and cost of; assessment for
3. Authority to make regulations.
4. Service of demand under 18 Vic., c. 38, s. 22.

Section.

5. Assessment Roll, preparation of; relief of tenants.
6. Parish of Simonds, included under 18 Vic., c. 38, s. 14 and 15.
7. Repugnant provisions repealed.

Passed 12th March, 1858.

BE IT ENACTED by the Lieutenant Governor, Legislative Council, and Assembly, as follows:

1. That for the purpose of completing the system of Water Supply contemplated under an Act of the Legislature of the Province made and passed in the eighteenth year of the Reign of Her Majesty Queen Victoria, intituled *An Act to provide for an improved system of Water Supply and Sewerage of part of the City of Saint John and Parish of Portland, in the County of Saint John*, the Commissioners are hereby authorized and empowered to make a further issue of Debentures to an amount not exceeding the sum of twenty-five thousand pounds, in addition to the amount authorized by the provisions of the said Act, to be charged, paid, and redeemed in the same manner as the Debentures and the interest thereof issued under the said recited Act.

2. That the Commissioners shall be and are hereby authorized and required, whenever good and sufficient main pipes for Water Supply in the Parish of Portland, or any part thereof, are laid and ready for use, to provide and place near said main pipe, such number of fire hydrants as they may think necessary and expedient; the cost of said fire hydrants, together with the expense of placing them and keeping them in good order, shall be charge-

able on the said Parish of Portland; and the Commissioners shall prepare an estimate in each year of the sum or sums of money expended or required for these purposes, and shall on or before the thirty-first day of March send a requisition in writing, under their hands, or any two of them, to the Assessors of rates and taxes for the said Parish of Portland, to assess the same on the said Parish in like manner as other rates and taxes; and it shall be the duty of the said Assessors, and they are hereby required forthwith to comply with such requisition, and to proceed thereon in the same manner as upon ordinary warrants of assessments, and the amount so assessed shall be levied and collected in like manner as other City and County taxes and paid over by the several collectors to the Commissioners.

3. The Commissioners shall have authority to make bye-laws and ordinances and establish rules and regulations for the care and protection of fire hydrants, free hydrants, service pipes, meters, and fixtures, within or without premises supplied, or ready to be supplied; to prevent any unnecessary waste or thing prejudicial to the general Water Supply or Works of the Commissioners, and regulate by meters, if necessary, the consumption of water on premises supplied or to be supplied, and for shutting off water from any vessel, place, or premises for a violation of any bye-law or ordinance, rules or regulations made by the Commissioners; and the said Commissioners are hereby empowered to enforce said bye-laws, ordinances, rules, and regulations, impose and recover fines and penalties not exceeding forty shillings for any one offence, and levy and collect the same with costs by Warrants of Distress, to be issued upon the order of the Commissioners and signed by the Chairman or two of the Commissioners, against the goods and chattels of the offender; provided always, that all such bye-laws, ordinances, rules, or regulations shall be transmitted on the making thereof to the Governor; and it shall and may be lawful for the Governor in Council, within thirty days after the receipt of such ordinances, bye-laws, rules, or regulations, to disallow the

same or any part thereof, which disallowance shall be signified to the said Commissioners, and thereupon the same, or any part thereof so disallowed, shall be void.

4. That any demand to be made under the twenty-second section of the said recited Act, may be left with any person upon the premises, and if the premises are unoccupied or vacant, may be posted or affixed upon the same; and in any warrant to be issued under the provisions of the said Act, for recovering rates and assessments, it shall be sufficient to state that a demand has been made of the amount of the rate, and any demand may be signed by the Chairman or Secretary of the Board, or person authorized by them to sign such demand.

5. The annual assessment roll shall be prepared and completed by the Commissioners, or under their direction, in each year, on or before the thirtieth day of September, based on the requirements of each successive year, and shall be so levied and collected; a copy of which assessment roll shall be kept for inspection at the office of the Commissioners; and any tenant, occupant, or other person, whose goods and chattels may have been distrained upon for the assessment upon the premises in which they may reside, shall be entitled to recover the same from the owner in fee or leaseholder for renewable terms of the said premises, together with the costs and expenses that may have been incurred thereon, unless it can be shown that some agreement to the contrary had been made between the parties.

6. Sections fourteen and fifteen of the above recited Act shall include the Parish of Simonds, in the County of Saint John, for all the purposes of the works of the Commissioners.

7. That so much of the provisions of the above recited Act as shall be repugnant to the provisions of this Act is hereby repealed.

XXV VICTORIA. — CHAPTER 43.

AN ACT IN FURTHER AMENDMENT OF THE LAW RELATING TO
WATER SUPPLY AND SEWERAGE IN THE CITY OF SAINT JOHN,
AND PART OF THE PARISH OF PORTLAND IN THE COUNTY OF
SAINT JOHN.

Section.

1. Chairman to give Bond.
2. Section 26 of former Act repealed; duty of Commissioners.
3. Auditors to have free access to all books, &c.

Section.

4. Disqualification of certain persons.
5. Copy of Assessment to be filed annually with Common Clerk.
6. Rates due, how recovered.

Passed 23rd April, 1862.

BE IT ENACTED by the Lieutenant Governor, Legislative Council, and Assembly, as follows :

1. The Chairman of the Commissioners now in office, and any Chairman of the Commissioners to be appointed under the Act intituled *An Act to provide for an improved system of Sewerage and Water Supply of part of the City of Saint John and Parish of Portland, in the County of Saint John*, before entering on the duties of his office, shall give security by bond to the Common Council of the said City, to the satisfaction of the said Common Council, for the faithful discharge of all the duties of his office under the provisions of the said Act, or any Act which may be passed in amendment thereof, and for the payment over (to such other Chairman of the Commissioners as the said Common Council, on any change of the Commissioners, may deem advisable and may order) of all moneys in the hands of the superseded Commissioners at the time of such change, and for accounting to the said Common Council from time to time for all or any of their acts, when they shall deem it necessary and so order.

2. The twenty-sixth section of the said recited Act is hereby repealed, and in lieu thereof the Commissioners shall keep regular books of account, in which shall be entered all moneys received and all disbursements made from time to time under the authority of the said Acts, and also file in the office of the said Commissioners all correspondence, contracts, estimates, and other

papers appertaining to the same ; and they shall annually file in the Common Clerk's office detailed accounts of their receipts and expenditure, made up to the thirty-first day of December in each year, for the use and inspection of all rate-payers ; and the said Common Council shall appoint three Auditors to audit such accounts ; and the said Commissioners shall submit all books of account, vouchers, correspondence, estimates, contracts, plans, assessments, and other documents and papers for examination and investigation, to the said Auditors respectively, when they or either of them shall require the same.

3. The said Auditors respectively shall at all times, as heretofore, while engaged in auditing such accounts, have free access to all such books and documents hereinbefore mentioned and connected with the duties of the said Commissioners, or on file in the office of the said Commissioners, as they may deem necessary to the elucidation and explanation of the items of said accounts ; and further, the said Auditors respectively shall annually report to the said Common Council and General Sessions, respectively, and their reports in detail shall be printed and published ; and the said Auditors shall severally be entitled to the remuneration mentioned in the twenty-eighth section of the said recited Act.

4. That from and after the second Tuesday in April next, no person shall be eligible to be a candidate, or capable of being elected or returned as an Alderman or Councillor of the Common Council of the City of Saint John, or capable to sit or vote therein, who holds any situation under the Commissioners appointed, or that hereafter may be appointed, to manage the Water Supply and Sewerage of the City of Saint John and Parish of Portland.

5. The Commissioners shall annually file a copy of the book containing the assessment for the year in the office of the Common Clerk of the City, within one month after the same is made up, to be open at all times within office hours to the inspection of any rate-payer of the City or Parish of Portland, without the payment of any fee.

6. No proceedings shall be taken under the twenty-second and

twenty-third sections of the said Act for the recovery of any rate after the expiration of one year from the time of assessment, provided that nothing in this section contained shall relieve any party from personal liability for any rate or assessment.

XXVIII VICTORIA. — CHAPTER 28.

AN ACT TO AMEND THE LAW RELATING TO SEWERAGE IN THE CITY OF SAINT JOHN ON THE EASTERN SIDE OF THE HARBOR.

Section.

1. Power of Commissioners to lay down Mains or Common Sewers.
2. Size of Sewers.
3. Drains connecting with Sewers, how built.
4. When Commissioners may compel owners of land to build Drains to connect with Sewers.
5. Persons building Drain to connect with Sewer without permission of Commissioners — Penalty; building Drains with permission — Fee.
6. Power of Commissioners to enter upon lands, proviso.
7. Commissioners to issue Debentures.

Section.

8. Interest on and payment of Debentures, how provided.
9. Moneys raised by Debentures, how appropriated.
10. Commissioners may make Bye-Laws.
11. Commissioners individually responsible only.
12. Chairman of Commissioners to give Bonds.
13. Commissioners to keep record of expenditures, &c.
14. Cap. 72, Title X, Part I, Revised Statutes, in part repealed.
15. Sections 10, 11, 12, and 13 18th Victoria, cap. 38, repealed.

Passed 8th June, 1865.

WHEREAS, it is expedient that certain alterations, additions, and amendments should be made in an Act of Assembly of this Province, passed in the eighteenth year of the reign of Her present Majesty Queen Victoria, intituled *An Act to provide for an improved system of Sewerage and Water Supply of part of the City of Saint John and Parish of Portland, in the County of Saint John*, in that part relating to sewerage;

Be it therefore enacted by the Lieutenant Governor, Legislative Council, and Assembly, as follows:

1. The Commissioners of Sewerage and Water Supply of part of the City of Saint John, and Parish of Portland, in the County of Saint John, shall, whenever they deem it expedient or neces-

sary, construct and place Mains or common Sewers in any street, highway, alley, or lot of land, being private property or otherwise, in the City of Saint John, on the eastern side of the Harbor, and maintain and repair all main Sewers in the said city.

2. All common Sewers laid down by the said Commissioners in any street, highway, or alley, shall be laid as nearly as possible in the centre of such street, highway, or alley; and, where it is practicable and advisable, such common Sewers shall be of such dimensions to be entered and cleaned without disturbing the surface of the street above.

3. All drains which shall hereafter be carried or conducted from any private lot, grounds, or premises, into any such main or common Sewer, shall be built of such materials as the said Commissioners shall direct, and shall be laid under their directions, of such size and with such descent, and, when required, with such strainers as they, the said Commissioners, shall require, and shall, if practicable, be of sufficient size to be cleaned from the common Sewer without disturbing the surface of the street above.

4. The said Commissioners shall have power to require any owner of lands fronting upon or adjoining any street, highway, lot, or other place in the City of Saint John, on the eastern side of the Harbor, in which any common Sewer has been or shall be laid down, his agent or tenant, to construct a sufficient drain from his house, yard, or lot to and into such common Sewer, whenever, in the opinion of such Commissioners, the same shall be necessary, and shall give notice in writing to such owner, his agent or tenant, of the time within which such drain shall be completed; and in case the said owner, his agent or tenants, shall neglect to construct or complete the same within the time specified in such notice, the said Commissioners shall cause the same to be done, and shall recover the whole amount of the expense incurred by them in so doing, as also the charge for entering a main Sewer, with costs of distress and sale of any goods or chattels found in or upon such house, yard, or lot, or

by sequestration of such house, yard, or lot, or by any other method of proceeding prescribed in and by the said recited Act for the collection of any rates, assessments, or arrearages therein mentioned; such distress and sale, sequestration, or other method of proceeding as aforesaid, to be had, made, conducted, and prosecuted in the same manner and with like effect as any distress, sale, sequestration, or other method of proceeding under the said recited Act.

5. Any person carrying or conducting any drain from any such private lot, ground, or premises, without permission in writing from the Chairman of the said Commissioners of Water Supply and Sewerage, shall forfeit and pay the sum of twenty dollars to the said Commissioners, and shall also be liable to pay all such damages, by way of indemnification, as the said Commissioners shall deem just and reasonable; and all persons to whom the said permission shall be granted shall pay therefor a sum of not less than ten dollars, as the said Commissioners shall fix and determine, which sums may be recovered in the same manner as any assessment or penalty may be recovered under and by virtue of the same recited Act.

6. The said Commissioners, or any or either of them, and their servants, agents, or workmen, shall have full power, and they are hereby authorized from time to time as occasion may require, or the said Commissioners, or either of them, may deem necessary, to enter into and upon any lands, tenements, and premises in the said City, on the eastern side of the harbor, whether inhabited or otherwise, and lay down and construct any main sewer or drain, or branch sewer or drain, in, through, and along any such lands or tenements, and also inspect, repair, take up, replace, alter, and amend any such main or branch sewer or drain, and open up any natural water course when the same may be obstructed, and may remain on any such lands and premises as long from time to time as they may deem requisite for the proper execution of any such work or works, and may make all such excavations on the premises as may be expedient, and take

up and remove any floors, timber, planks, or any walls, fences, or erections whatsoever, doing no unnecessary damage to the same, and carefully replacing the same upon the requisite work being performed ; provided no such entry shall be made between the hours of sunset and sunrise, nor without the permission of the owner or occupant, if resident on the premises, being first requested, but the refusal of such permission shall not prevent or delay the execution of the work ; and the said Commissioners shall, for the purposes of this Act, have within the said City of Saint John, on the eastern side of the harbor, all such further and other powers and authorities as are given to the said Commissioners by the 14th section of the said Act, 18 Vic., c. 38.

7. For the purpose of carrying out the system of Sewerage under the provisions of this Act, and complying with the other requirements hereof, the Commissioners are hereby authorized and empowered to make an additional issue of Debentures to an amount not exceeding sixty thousand dollars in the whole ; no greater sum than twenty thousand dollars to be issued or expended in any one year, to be charged, paid, and redeemed in the same manner as the Water Debentures, and the interest thereof, issued under the said Act of Assembly, 18 Vic., c. 38, and to be called Sewerage Debentures.

8. To meet the interest of Debentures issued under this Act, and the annual expenses, as well as to provide for the payment of the principal by a sinking fund or otherwise, the said Commissioners are hereby empowered to order and direct a yearly assessment on that part of the said City lying on the eastern side of the harbor, and the inhabitants thereof, of such a sum or sums of money, not exceeding four thousand dollars in any one year, besides the costs and charges of assessing and collecting as shall be necessary therefor, to be assessed, levied, and collected under the provisions and according to the principles of the "Saint John City Assessment Act of 1859," and the several Acts in amendment thereof, which sums shall from time to time as collected be paid over by the Collector or Receiver of Taxes

for the said City to the said Commissioners of Sewerage and Water Supply.

9. The moneys raised under this Act by the sale of Debentures as aforesaid, shall be appropriated to the making, laying down, and repairing of sewers, and opening water courses in the said eastern part of the City of Saint John.

10. The said Commissioners are hereby authorized to make bye-laws, not repugnant to the spirit or meaning of this Act, and to impose reasonable penalties for the breach or violation thereof, not exceeding twenty dollars, which penalties shall be recoverable in the same manner as any penalties imposed under and by virtue of the Act of Assembly, 18 Vic., c. 38.

11. The Commissioners shall not be answerable the one for the other of them, nor for the acts, defaults, or misdoings of each other, and in case of any default or misapplication of the moneys received by any Commissioner by virtue of this Act, the whole real and personal estate of such Commissioner within the Province shall be liable for the same in like manner as for a debt due unto the Crown, and immediately upon such default or misapplication being made known to the Lieutenant Governor or Commander in Chief of the Province for the time being, it shall be his duty to order a writ of extent to be thereon issued.

12. The Chairman of the said Commissioners for the time being, in addition to the liabilities in the last foregoing section mentioned, shall give security by bond to the Mayor, Aldermen, and Commonalty of the City of Saint John, in such sum and sums and with surety or sureties to the satisfaction of the Common Council of said City, for the faithful discharge of all the duties of his office under the provisions of this Act, and for accounting to the Common Council of said City from time to time for all or any of his acts, when they shall deem it necessary and so order, and for the payment over of all moneys in his hands as such Chairman, or as one of such Commissioners, to any Chairman appointed by the Common Council to succeed him on any change of Commissioners.

13. The said Commissioners shall keep regular Books of Account, in which shall be entered all moneys received and all disbursements made from time to time under the authority of this Act; and also file in the office of the said Commissioners all correspondence, contracts, estimates, and other papers appertaining to the same; and they shall annually, on or before the first day of March, file in the Common Clerk's office detailed accounts of their receipts and expenditures under this Act; and the Auditors appointed in each year to audit the accounts of the Water Commissioners, under said Act, 18 Vic., c. 38, shall also audit and report on the said accounts filed by virtue of this Act.

14. Chapter 72, Title x, Part I, of the Revised Statutes is hereby repealed, except in so far as relates to any thing done or commenced, and in progress and undetermined, under and by virtue thereof, or to the recovery of any assessment made by virtue thereof.

15. Sections 10, 11, 12, 13, and such other sections of the Act of Assembly, 18 Vic., c. 38, as are repugnant to this Act, so far as they relate to Sewerage in the City of Saint John, are hereby repealed.

XXVIII VICTORIA.—CHAPTER 29.

AN ACT RELATING TO WATER SUPPLY IN THE CITY OF SAINT JOHN AND PART OF THE PARISH OF PORTLAND, IN THE COUNTY OF SAINT JOHN.

Section.

1. Sec. 9, 18 Vic., c. 38, repealed; owners of lands through which mains pass to be assessed.
2. Owners of personal property taxable.
3. Numbers of lots and names of parties to be entered in assessment book and filed with Common Clerk; appeal, how made.
4. Owners, &c., to give true returns and answers to Commissioners: penalty.
5. Commissioners to make an annual detailed statement.
6. General assessment to be made in case of deficiency.
7. The Commissioners may act.
8. Application of 5th section, 26 Vic., c. 28.
9. Commissioners authorized to issue Debentures; limit.
10. Commissioners authorized to issue further Debentures; limit.

Section.

11. Assessment, if not paid within thirty days, Commissioners to issue Warrant.
12. Commissioners may order sale of real estate of defaulters.
13. Rates due at passing of Act may be collected by Commissioners.
14. Collection from customers; how collected.
15. When streets are mentioned, to apply to squares, &c.
16. Commissioners may correct error in assessment list; proviso.
17. To whom sections 14 and 15, c. 38, 18 Vic., applies.
18. Powers vested by c. 72, Title x, in Corporation, now vested in Commissioners.
19. Commissioners or agents may enter on land.
20. Penalties, how recovered.

Passed 8th June, 1865.

WHEREAS in consequence of the great public benefit and protection to property derivable from the introduction of Water into the City of Saint John and district of the Parish of Portland, in the County of Saint John, under and by virtue of an Act passed in the eighteenth year of Her present Majesty, intituled *An Act to provide for an improved system of Sewerage and Water Supply of part of the City of Saint John and Parish of Portland, in the County of Saint John*, and the several Acts in amendment thereof, it is equitable that all real estate, whether built upon or vacant, and all stocks in trade, wares, and merchandise, in the whole of the said City, on the eastern side of the harbor, and within a certain distance of the mains in said district of the Parish of Portland, should be assessed annually as hereinafter provided by the Commissioners now or hereafter to be appointed under and by virtue of said Acts, or any of them;

Be it therefore enacted by the Lieutenant Governor, Legislative Council, and Assembly, as follows :

1. The ninth section of the said recited Act, 18 Vic., c. 38, intituled *An Act to provide for an improved system of Sewerage and Water Supply of part of the City of Saint John and Parish of Portland, in the County of Saint John*, is hereby repealed, except as to any thing done, pending, or in progress and undetermined under and by virtue thereof; and in lieu thereof, the owners in fee or leaseholders for renewable terms of any lands or tenements situate within the whole City of Saint John, on the eastern side of the harbor, and within that part of the district of the Parish of Portland mentioned in said recited Act, through or along which, or within seven hundred feet of which, in said Portland District, mains for the supply of water shall pass, and also the owner of or traders in all stocks in trade, wares, and merchandise in said City, and such hereinbefore specified part of said district of the Parish of Portland, shall, whether the water be taken or used on the premises respectively or not, be assessed for the purposes of the said recited Act, 18 Vic., c. 38, and the several Acts in force in amendment thereof, in each year, at a rate and rates to be fixed and determined by the Commissioners in each year in their discretion, according to the Schedule (B) appended to this Act, and being part thereof; and where pipes for the supply of water are laid to any premises, then at a rate and rates to be fixed and determined by the said Commissioners in each year in their discretion, according to the Schedule (C) also appended to this Act, and forming part thereof, excepting steam mills, manufactories, baths, hotels, and all places and premises for which and where a large quantity of water is required, which shall be rated by agreement with the parties. If in settling any such rate and rates, or in any other matter within the scope of their authority, any difference should arise among the said Commissioners, the same shall be decided by a majority of said Commissioners.

2. That the owner of all furniture and personal property ben-

effitted by the protection from fire that water supply affords, of the value of one hundred and fifty pounds and upwards, shall be taxed in the same manner and at the same rate per centum as stocks in trade, wares, and merchandise.

3. In the Assessment Book the several lots or premises assessed, whether occupied or vacant, shall be numbered, and the rate assessed on each set down, and the names of the parties assessed on stocks in trade or otherwise, and the amount on which assessment made, and the rate, and a copy of the assessment shall be filed by the Commissioners in the office of the Common Clerk of the said City, on or before the first day of September in each year; and if any person shall think himself aggrieved by reason of such assessment, it shall be lawful for him, in case the same shall be upon the premises situate in the said City, to appeal therefrom to the Common Council of the said City; and in case the assessment shall be upon premises in the said District of the said Parish of Portland, such appeal shall be to the General Quarter Sessions of the said City and County, and the decision in either case shall be final, and the assessment be amended by the said Commissioners in accordance with such order as may be therein made by the said Common Council or Sessions respectively, provided that all such appeals shall be made within thirty days after the demand of the amount assessed shall have been made upon the party so appealing; and in case at the time of such appeal said General Sessions of the Peace shall not be sitting, then the party appealing shall file his appeal at the office of the Clerk of the Peace for the City and County of Saint John, and a certificate, under the hand of the said Clerk of the Peace, of the filing of such appeal lodged in the office of the Commissioners aforesaid, shall stay further proceedings to recover such rate until such appeal be determined at the General Sessions holden next thereafter.

4. All persons owning or occupying any premises liable to be rated under this Act, or the Acts to which this is an amendment, shall give correct and true answers and returns to the Water

Commissioners, their officers or persons appointed by them for the purpose, as to the occupation of any such premises, and the use of water thereon, and the average yearly value of stock in trade and all other personal property, wares, and merchandise within the City of Saint John, on the eastern side of the harbor, and in the Parish of Portland, in the districts to which the tax extends, owned by him or them, under a penalty for every neglect or refusal of a sum not exceeding twenty dollars nor less than five dollars; provided, however, that timber and lumber not piled on the wharves on the eastern side of the harbor of Saint John shall not be liable to be taxed.

5. Among the detailed accounts required by the third section of the Act passed in the twenty-fifth year of the reign of Her present Majesty, intituled *An Act in further amendment of the Law relating to Water Supply and Sewerage in the City of Saint John and part of the Parish of Portland, in the County of Saint John*, the said Commissioners shall render annually a statement showing the whole amount collected, together with all sums in arrear and unpaid, and the names of the defaulters, so as to exhibit a debtor and creditor account of that part of the service, and file the same in the Common Clerk's office.

6. In lieu of the 25th section of the said first recited Act, for any deficiency for each year in meeting the expenditure for Water Supply and consumption, and interest, under the said first recited Act or Acts in amendment thereof, beyond the amount annually raised in manner aforesaid for Water Supply and consumption, a general assessment shall be made by Warrant under the hands and seals of the said Commissioners, or a major part of them, on the whole of the said City, on the eastern side of the harbor, and the inhabitants thereof, and on the said district of Portland, and the inhabitants thereof, such district to be assessed and to pay fifteen per cent. of the said deficiency as its proportion, to be levied, assessed, and collected in every respect by the same persons, and as regards the real and personal estate and income of the inhabitants, and also the real estate of non-residents and all

other things, the poll rate only excepted, in the same manner as any assessment is now or may be hereafter made by law for levying, assessing, and collecting County, Town, or Parish charges; and when collected shall be paid to the said Commissioners, and the remainder of the said deficiency to be levied, assessed, and collected on the eastern side of the harbor of the said City, as any other rate levied or imposed upon the said City under the provisions of the Saint John City Assessment Act of 1859, and the several Acts in amendment thereof; and when collected to be paid to the said Commissioners, provided that the Warrants to be issued by the said Commissioners may be issued in the present year at any time before the tenth day of August, and in all succeeding years on or before the tenth day of May in each year.

7. All and every of the powers, functions, duties, acts, and things conferred upon, or required or authorized to be done by the Commissioners appointed or to be appointed under and by virtue of the said Act, 18 Vic., c. 38, hereinbefore mentioned, and the several Acts in amendment thereof, and this Act, may be exercised, ordered, done, and performed by two of the said Commissioners of whom the Chairman shall be one.

8. The provisions of the 4th section of the Act, 26 Vic., c. 28, shall be held and taken to apply to any rate or rates levied and assessed under or by virtue of the Act, 18 Vic., c. 38, or under any Act in amendment thereof, or this Act; provided that this Act shall not be construed to confirm, legalize, or establish any act or thing done or committed by the said Commissioners, or the Water Company incorporated by Act of Assembly made and passed in the second year of the reign of King William the Fourth, intituled *An Act to incorporate sundry persons by the name of the Saint John Water Company*, contrary to the true meaning or provisions of any law or laws relating thereto.

9. For the purpose of more fully completing the system of Water Supply contemplated under the said first recited Act, and the several Acts in amendment thereof, the Commissioners are hereby authorized and empowered to make a further issue of De-

bentures to an amount not exceeding the sum of one hundred thousand dollars in addition to the amount authorized by the provisions of the said Acts, to be charged, paid, and redeemed in the same manner as the Debentures and the interest thereof, issued under the said recited Act, and the Acts in amendment thereof.

10. In addition to the last preceding section of this Act, the Commissioners are hereby authorized and empowered to make a further issue of Debentures to an amount not exceeding fifty-two thousand dollars currency, or ten thousand five hundred pounds sterling, for the purpose of paying and redeeming the sum of ten thousand five hundred pounds sterling, issued by the Commissioners, and becoming due and payable in London on the first day of May, one thousand eight hundred and sixty-seven.

11. If any person assessed under and by virtue of the said first recited Act, or the Acts in amendment thereof, or this Act, shall not pay the amount for which he is liable under such assessment within thirty days after notice of demand thereof, the Commissioners may have the option to issue execution (A) to be signed by the Chairman, against the person so assessed, which execution may be executed by the Sheriff, or any Marshal of the City of Saint John, or any Peace Officer of the City and County of Saint John ; provided always, that the proof of such notice of assessment, and the non-payment of such assessment, shall be verified by the affidavit of the Collector or other officer appointed by the Commissioners for that purpose.

12. It shall be lawful for the said Commissioners by Warrant, under their hand and seal, to order the Sheriff of the City and County of Saint John to make sale of the real estate, or such part thereof as may be necessary of the said person so assessed, according to the provisions of the 24th section of the Saint John Assessment Act of 1859, which sale shall be made and conducted in every respect as directed by said Act, and the said Act shall apply to the said Commissioners of Water Supply and Sewerage in the same manner as the same is now enacted therein with ref-

erence to the Receiver of Taxes for the said City of Saint John, and to all powers, duties, parties, and officers therein mentioned, and applicable to the said Receiver of Taxes.

13. The Commissioners shall have power to collect all such water rates and assessments as are unsettled at the time of the passing of this Act, and may give the like notice in respect thereof, and take the same proceedings for the collection thereof, as herein provided for assessments made under this Act and the Act of 18 Vic., c. 38, aforesaid, and the Acts in amendment thereof.

14. It shall be lawful for the Commissioners to collect from agreement customers, for steam mills, manufactories, baths, hotels, and all other agreement customers, quarterly, and if not paid the Commissioners shall have authority to issue executions in the same manner as any other rates and assessments.

15. Where any streets are mentioned in the Act of 18 Vic., c. 38, and the Acts in amendment thereof, the same shall apply and extend to squares, roads, alleys, lanes, courts, places, and all other thoroughfares by whatsoever style or like called, and for the carrying out of the provisions of said Acts, or of this Act, and the chapter 161, "Of terms, explanations, and general provisions," of the Revised Statutes, Title 41, shall apply to the said Acts.

16. If any error in the preparation of the Assessment List by the Commissioners be made, they may at any time before a subsequent rating correct such error in such Assessment List, provided that a record of any such corrections or alterations be forthwith filed in the Common Clerk's office.

17. The provisions of the Act, 18 Vic., c 38, s. 14 and 15, shall extend and apply to all persons and officers employed by the Commissioners for making, preparing, and completing any plans for levels, sewerage properties, and all other plans contemplated and necessary for the carrying out of the said Act and Acts in amendment thereof, and this Act.

18. All powers now vested in the Corporation of Saint John

by the Revised Statutes, chapter 72, Title x, are hereby divested out of the Corporation and transferred to and vested in the said Commissioners.

19. The said Commissioners, or any or either of them, and their servants, agents, or workmen, shall have full power, and they are hereby authorized, from time to time, as occasion may require, or the said Commissioners, or either of them, may deem necessary, to enter into and upon any lands, tenements, and premises in the said City, on the eastern side of the harbor, whether inhabited or otherwise, and make, or cause to be made, surveys, plans, specifications, and other descriptions of the same, or any part thereof, and may lay down and construct any main sewer or drain, or any branch sewer or drain in, through, and along any such lands or tenements, and also inspect, repair, take up, replace, alter, and amend any such main or branch sewer or drain, and open up any natural water course, when the same may be obstructed, and may remain on any such lands and premises as long, from time to time, as they may deem requisite for the proper execution of any such work or works, and may make all such excavations on the premises as may be expedient, and take up and remove any floors, timbers, planks, or any walls, fences, or erections whatsoever, doing no unnecessary damage to the same, and carefully replacing the same upon the requisite work being performed; provided no such entry shall be made between the hours of sunset and sunrise, nor without the permission of the owner or occupant, if resident on the premises, being first requested; but the refusal of such permission shall not prevent or delay the execution of the work; and the said Commissioners shall, for the purposes of this Act, have within the said City of Saint John, on the eastern side of the harbor, all such further and other powers and authorities as are given to the said Commissioners by the 14th section of the said Act, 18 Vic., c. 38.

20. Penalties imposed under this Act may be recovered, with costs, by summary convictions, if within the City of Saint John, before the Police Magistrate of the City of Saint John, in the

same manner and with the like effect as any other penalties can be enforced before any Police Magistrate; and if within the said Parish of Portland, before the Police Magistrate for the Portland Police District, in the same manner and with the like effect as any other penalties can be enforced before said Police Magistrate in Portland Police District.

SCHEDULE A.

EXECUTION.

To the Sheriff of the City and County of Saint John, or any Constable or Marshal of the City of Saint John, or Peace Officer in said City and County:

Levy and sell of the goods and chattels of A. B., within the City and County of Saint John, the sum of which has been assessed upon him under the Act relating to Water Supply in the City of Saint John and part of the Parish of Portland, in the County of Saint John, and the other Acts relating to the same, and for costs of execution and levying, the whole being and have that money at my office on the day of [*not less than ten nor more than thirty days from the date of the execution*]; and for want of goods and chattels whereon to levy, take the said A. B. and deliver him to the keeper of the gaol of the City and County of Saint John, who is hereby required to receive and safely keep him days, unless the same, with costs, be sooner paid, and make return hereof at the day and place aforesaid.

Dated this day of A. D. 18

C. D., *Chairman of Commissioners.*

(B)

In the City of Saint John, on the eastern side of the harbor.

For every four hundred dollars value of real estate on which any buildings are erected, including the value of such buildings, on the line of any main pipe, or within seven hundred feet of any main, per centum.

For every four hundred dollars value of real estate on which any buildings are erected, including the value of such buildings, situate

in any part of the said City, not included within the former section,
per centum.

For every four hundred dollars value of vacant land on which no
building is erected, situate on the line of any pipe, or within seven
hundred feet of any main, per centum.

For every four hundred dollars value of vacant land on which no
building is erected, situate in any part of said City, not included
within the last preceding section, per centum.

For every four hundred dollars value of all stocks in trade, wares,
and merchandise, and personal property, situate, stored, or being on
the line of any main pipe, or within seven hundred feet of any main,
per centum.

For every four hundred dollars value of all stocks in trade, wares,
and merchandise, situate, stored, or being in any part of the said
City, not included in the last preceding section. per centum.

Any person liable to be assessed for stock in trade, may, when
called upon by the Commissions, make a statement, on oath, of the
annual value of his stock, and it shall be valued accordingly.

In District in the Parish of Portland.

For every four hundred dollars value of real estate on which any
buildings are erected, including the value of such buildings, on the
line of any main pipe, or within seven hundred feet of any main
pipe, per centum.

For every four hundred dollars value of all stocks in trade, wares,
and merchandise, situate, stored, or being on the line of any main
pipe, or within seven hundred feet of any main, per centum.

(C)

In the City of Saint John, on the eastern side of the harbor, and in
the district of the Parish of Portland, when supply
pipe from main is led to premises.

For one Family,	....	....	....	....	\$
Second Family in same house,	....	....	....	....
Each additional Family,	....	....	....	....
Each Water Closet,	....	....	....	....
Each Bath,	....	....	....	....

Each light wagon Horse, including water for wash-				
ing carriage,	....	....	....	\$
Each additional Horse,	....	....	....
Omnibus, coach, or truck Horse,	....	....	....
Livery Stables,	....	....	....
Each Horse, including water for washing carriage,				
Taverns,	....	....	....	....
Saloons,	....	....	....	....
Shops,	....	....	....	....
Workshops,	....	....	....	....
Manufactories,	....	....	....	....
Other places,	....	....	....	....

No unoccupied house shall be rated for consumption; should it, however, be occupied, a pro rata charge to be made for the remainder of the year.

XXX VICTORIA.—CHAPTER 34, SECTION 6.

It shall be the duty of the Commissioners of Sewerage and Water Supply for the City of Saint John and part of the Parish of Portland, in the County of Saint John, to provide for all surface drainage from the public streets and thoroughfares of the said City of Saint John, on the eastern side of the harbor, and to construct, lay, place, and maintain proper and sufficient drains, and also renew, repair, and maintain all drains now laid leading from the gratings or other openings now put and placed, or that may hereafter by the Corporation of the City of Saint John be put and placed in or near any such public street or thoroughfare, to receive and carry off such surface and street drainage to any main or common sewer; and also to construct, lay, and place, repair, and maintain proper and sufficient catch-basins to receive the gravel and other sediment washing through any such gratings or other openings in or near any such public street or thoroughfare.

XXX VICTORIA.—CHAPTER 36, SECTION 5.

Any person who shall wilfully break, or cause to be broken, any water pipe, water hydrant, fire hydrant, or any other thing belonging to or in connection with the Water Works in the Parish of Portland, shall, on conviction thereof before the Police Magistrate sitting at the Police Office in the Parish of Portland, be liable to a fine of not more than fifty dollars nor less than eight dollars, and for non-payment thereof, it shall be lawful for the Police Magistrate to commit the offender to the common gaol or Provincial Penitentiary for any term not exceeding three calendar months.

XXXII VICTORIA.—CHAPTER 64.

AN ACT TO AUTHORIZE THE COMMISSIONERS OF SEWERAGE AND WATER SUPPLY FOR THE CITY OF SAINT JOHN, ON THE EASTERN SIDE OF THE HARBOR, AND THE PARISH OF PORTLAND, IN THE COUNTY OF SAINT JOHN, TO REIMBURSE CERTAIN PERSONS HERETOFORE ASSESSED FOR A SEWER ON A PART OF KING STREET, IN THE CITY OF SAINT JOHN.

Section.

1. Amounts to be paid by Commissioners to certain persons.
2. Amount to be paid Mayor, &c.

Section.

- Chamberlain to pay money into general fund.
3. Amount paid, to what service charged; proviso.

Passed 21st April, 1869.

WHEREAS it is equitable to reimburse certain persons a part of the amounts assessed on them for a brick sewer heretofore laid down at the eastern end of King Street, in the City of Saint John, on the eastern side of the harbor, in such sums hereinafter mentioned, as said assessments would exceed the cost of a wooden sewer, and also to repay the City Corporation a sum paid on contract for said sewer;

Be it enacted by the Lieutenant Governor, Legislative Council, and Assembly, as follows :

1. The Commissioners of Sewerage and Water Supply for the City of Saint John, on the eastern side of the harbor, and the Parish of Portland, in the County of Saint John, are hereby authorized and required to pay to the following persons and estates the respective amounts herein set opposite the names of such persons or estates, in relief of an assessment for a brick sewer in King Street, in the City of Saint John, on the eastern side of the harbor, made upon the said persons and estates by the Common Council of the City of Saint John, under and by virtue of Chapter 72, Title x, of Part I of the Revised Statutes, which chapter was subsequently repealed by an Act of the General Assembly of this Province made and passed in the twenty-eighth year of the reign of Her present Majesty, intituled *An Act to amend the Law relating to Sewerage in the City of Saint John, on the eastern side of the harbor*; that is to say :

To the Trustees and Executors of the estate of the late Benjamin Smith, deceased, the sum of nineteen dollars ;

To Samuel P. Osgood the sum of thirty-three dollars ;

To the Administratrix of the estate of the late Robertson Bayard, deceased, the sum of seventeen dollars ;

To Archibald Totten the sum of thirty-three dollars ;

To Charles Patton the sum of forty-eight dollars ;

To Charles N. Skinner the sum of seventeen dollars ;

To the Executors of the estate of the late John Ansley, deceased, the sum of nineteen dollars ;

To James J. Christie the sum of thirty dollars ;

To Henry Robertson the sum of thirty-eight dollars ;

To Margaret Hutchings the sum of seventeen dollars ;

To Samuel Bustin, as agent of the heirs of the late John Bustin, deceased, the sum of seventeen dollars ;

To Thomas Bustin, agent for Benjamin Bustin, the sum of seventeen dollars ;

To Samuel Bustin the sum of thirty-three dollars.

2. The said Commissioners of Sewerage and Water Supply are also hereby authorized and required to pay to the Mayor, Aldermen, and Commonalty of the City of Saint John, at or in the office of the Chamberlain of the said City, the sum of three hundred and twenty-seven dollars, paid by them on account of such sewer; and the Chamberlain of said City shall pay such amount, when received by him, into the general revenue fund of the said City.

3. The said several amounts shall, when paid by the said Commissioners, be chargeable and charged in the same manner as other moneys are now by law charged and chargeable, which are required for and expended in the constructing, making, laying down, or repairing of sewers and opening of water courses in the City of Saint John.

4. The said brick sewer hereinbefore mentioned and referred to shall be under the control and management of the said Commissioners, as fully to all intents and purposes as any other sewers in the said City are now under their control and management, on the eastern side of the harbor; provided always, that persons and estates hereinbefore in the first section mentioned, but none other, shall be permitted by the said Commissioners to enter said sewer without the payment of any fee or charge for entering the same.

XXXII VICTORIA.—CHAPTER 66.

AN ACT RELATING TO WATER SUPPLY IN THE CITY OF SAINT JOHN AND PART OF THE PARISH OF PORTLAND, IN THE COUNTY OF SAINT JOHN.

Passed 21st April, 1869.

WHEREAS in many cases the proprietors of dwelling houses and other tenements along which the mains of the Commissioners of Water Supply for the City of Saint John

and Parish of Portland ~~pass~~, do not apply to have service pipes ried to their premises, and in consequence the occupants there. of supply themselves with water from the public hydrants, or the taps of neighbors, and thereby escape payment of the rate for consumption, under Schedule C of 28 Vic., c. 29;

Be it therefore enacted by the Lieutenant Governor, Legislative Council, and Assembly:

That from and after the passing of this Act, the owner of any dwelling house, or other occupied building in which water may be required, situate as mentioned in the first section of the above recited Act, and in front of or along which mains for the supply of water shall pass, shall, whether the water be taken and used upon or in the premises or not, be assessed at the same rate, according to Schedule C of the said recited Act, as if service pipes for the supply of water were laid to such premises, and the water actually taken and consumed thereon; provided only that the said Commissioners shall have discretionary power partly or wholly to exempt any such owner, where, in their opinion, it may be quite impracticable or very expensive to introduce the water into the premises, and in such case may decline to carry in a service pipe.

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XXXIII VICTORIA.—CHAPTER 85.

AN ACT IN FURTHER AMENDMENT OF THE LAWS RELATING TO SEWERAGE IN THE CITY OF SAINT JOHN, ON THE EASTERN SIDE OF THE HARBOR, AND TO SEWERAGE AND WATER SUPPLY OF PART OF THE CITY OF SAINT JOHN AND PARISH OF PORTLAND, IN THE COUNTY OF SAINT JOHN.

Section.

1. Additional Debentures authorized.
2. Interest and principal, how paid.
3. Money raised, how appropriated.

Section.

4. Remuneration to Commissioners.
5. Power of Commissioners to regulate hydrants.

Passed 7th April, 1870.

WHEREAS it is expedient for the purpose of more fully completing the system of Sewerage contemplated by the provisions of an Act made and passed in the twenty-eighth year of the reign of Her present Majesty, intituled *An Act to amend the Law relating to Sewerage in the City of Saint John, on the eastern side of the harbor*, and complying with the other requirements thereof, and for other purposes relating to the Sewerage and Water Supply of part of the City of Saint John and Parish of Portland, in the County of Saint John, that certain alterations, additions, and amendments should be made in the Acts relating thereto;

Be it therefore enacted by the Lieutenant Governor, Legislative Council, and Assembly, as follows :

1. The Commissioners of Sewerage and Water Supply of part of the City of Saint John and Parish of Portland, in the County of Saint John, are hereby authorized and empowered, for the purposes mentioned in the third section of this Act, to make an additional issue of Debentures, to be called "Sewerage Debentures," to an amount not exceeding forty thousand dollars, to be charged, paid, and redeemed in the same manner as the Debentures, and the interest thereof, issued under the said Act of Assembly made and passed in the twenty-eighth year of the reign

of Her present Majesty, intituled *An Act to amend the Law relating to Sewerage in the City of Saint John, on the eastern side of the harbor.*

2. To meet the interest of Debentures issued under this Act, and the annual expenses incident to this Act, as well as to provide for the payment of the principal, by a sinking fund or otherwise, the said Commissioners are hereby empowered to order and direct a yearly assessment on that part of the City of Saint John lying on the eastern side of the harbor, and the inhabitants thereof, of such a sum or sums of money, in addition to any sum provided for under the eighth section of the said recited Act, 28 Vic., c. 28, not exceeding the sum of three thousand dollars in any one year, besides the costs and charges of assessing and collecting, as shall be necessary therefor, to be assessed, levied, and collected under the provisions and according to the principles of the "Saint John City Assessment Act of 1859," and the several Acts in force in amendment thereof; which sums shall from time to time, as collected, be paid over by the Collector or Receiver of Taxes for the said City to the said Commissioners of Sewerage and Water Supply.

3. The moneys raised under this Act, by the sale of Debentures as aforesaid, shall be appropriated to the making, laying down, and repairing of sewers, and opening natural water courses, and to provide for surface drainage from the public streets, in that part of the City of Saint John lying on the eastern side of the harbor.

4. The remuneration to the "other Commissioners" mentioned in the fourth section of an Act made and passed in the eighteenth year of the reign of Her present Majesty, intituled *An Act to provide for an improved system of Sewerage and Water Supply of part of the City of Saint John and Parish of Portland, in the County of Saint John*, for each day's actual attendance, at the rate mentioned in the said fourth section of said last recited Act, shall not exceed the sum of three hundred dollars for each of said Commissioners in any one year; and so much of said section

of said last mentioned Act as is inconsistent herewith, is hereby repealed.

5. The said Water and Sewerage Commissioners shall alone have power, and they are hereby authorized to lay down, regulate, and keep in repair all domestic hydrants in the said City of Saint John, and all expenses connected therewith shall be paid by the said Commissioners from the funds in their hands as such Commissioners.

XXXIV VICTORIA, 1871.

CHAPTER 11, SECTION 153.

From and after the passing of this Act, on any vacancy occurring in the office of Commissioners of Sewerage and Water Supply for part of the City of Saint John and Parish or Town of Portland, the said Town Council shall have, hold, exercise, and enjoy all such right and power of appointment to the same as are vested in any General or Special Sessions of the Peace for the City and County of Saint John under and by virtue of an Act passed in the eighteenth year of the reign of Her present Majesty, intituled *An Act to provide for an improved system of Sewerage and Water Supply of part of the City of Saint John and Parish of Portland, in the County of Saint John*, and any Acts in amendment thereof; and in like manner shall have, hold, exercise, and enjoy the right of removal of any such Commissioner appointed by the said Sessions or the said Town Council, and re-appointing in his place, and shall have and exercise all such other rights, powers, duties, privileges, and immunities within the said Town of Portland as to any matter or thing relating to the said Act and Acts of Assembly, as are thereby vested in or given to the said Sessions, or the said Justices for the said City and County.

XXXIV VICTORIA.—CHAPTER 36.

AN ACT RELATING TO WATER SUPPLY IN PART OF THE CITY OF SAINT JOHN AND PARISH OF PORTLAND, IN THE COUNTY OF SAINT JOHN, AND TO REIMBURSE CERTAIN PERSONS FOR SEWERS IN THE CITY OF SAINT JOHN.

Section.

1. Commissioners to make further issue of Debentures; amount.
2. Amount to be paid estate of late Thomas Vaughan.

Section.

3. Amount to be paid M. Richey.
4. Above amounts to what charged.
3. What property is exempted from assessment.

Passed 17th May, 1871.

WHEREAS it has become necessary and expedient to extend and make additions to the Mains and Works for the Water Supply of the City of Saint John (east side) and of the Parish of Portland, in the County of Saint John;

Be it therefore enacted by the Lieutenant Governor, Legislative Council, and Assembly, as follows:

1. For the purpose of laying an additional Water Supply Main to the Reservoir at Little River, and for making connections and extending the Water Supply mains and Works to Loch Lomond, and for other purposes connected with making the system of Water Supply more efficient, the Commissioners of Sewerage and Water Supply under the Act of Assembly made and passed in the eighteenth year of the reign of Her present Majesty, intituled *An Act to provide for an improved system of Sewerage and Water Supply of part of the City of Saint John and Parish of Portland, in the County of Saint John*, and any Act or Acts in addition thereto, or in amendment thereof, are hereby authorized and empowered to make a further issue of Water Debentures, to an amount not exceeding three hundred thousand dollars, in addition to the amount authorized by the provisions of the several Acts now in force relating to the said Water Supply, to be redeemed in forty years from the first day of May, in the present year, and to be charged, paid, and redeemed in the same manner as the

Debentures, and the interest thereof, issued under the said recited Act passed in the eighteenth year of the reign of Her present Majesty, chapter thirty-eight, and the Acts in addition thereto and in amendment thereof, and as amended hereby.

2. The said Commissioners are hereby authorized and required to pay to the representatives of the late Thomas Vaughan, of the City of Saint John, merchant, deceased, the sum of six hundred and twenty-six dollars and seventeen cents, being the balance of money advanced by the said Thomas Vaughan in his life time to the Corporation of the City of Saint John, to enable them to build, construct, and lay down a sewer in a section of Princess and Carmarthen Streets, in the City of Saint John.

3. The said Commissioners are hereby authorized and required to pay to Marmaduke Richey, of the City of Saint John, the sum of fifty dollars in full for relief of assessment heretofore made for a sewer in Peters Street, in said City, the same not being available for his premises.

4. The said several amounts mentioned in the second and third sections of this Act shall, when paid by the said Commissioners, be chargeable and charged in the same manner as other moneys are now by law charged and chargeable, which are required for and expended in the constructing, making, laying down, or repairing of sewers and opening of water courses in the City of Saint John.

5. From and after the passing of this Act, the real and personal estate of the Mayor, Aldermen, and Commonalty of the City of Saint John, shall be and the same is hereby declared to be exempt from any and all assessment under said Act made and passed in the eighteenth year of the reign of Her present Majesty, intituled *An Act to provide for an improved system of Sewerage and Water Supply of part of the City of Saint John and Parish of Portland, in the County of Saint John*, and the several Acts in force in addition thereto and in amendment thereof, and this Act, and nothing in any of the said Acts, or this Act, shall be held to render the real or personal estate of the said Mayor, Aldermen,

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and Commonalty of the City of Saint John liable to any assessment under the said Acts, or any Act or Acts relating to Water Supply or Sewerage in the City of Saint John; provided that this exemption shall not be held to apply, nor shall the same apply so as to exempt from assessment under the said Acts, or any of them, any lands or tenements held by lessees from the said Mayor, Aldermen, and Commonalty, either in perpetuity or for renewable terms, but all such leaseholders and leasehold estates shall be liable to assessment as if this section had not been passed.

XXXVI VICTORIA.— CHAPTER 73.

AN ACT IN ADDITION TO AN ACT INTITULED "AN ACT IN FURTHER AMENDMENT OF THE LAWS RELATING TO SEWERAGE IN THE CITY OF SAINT JOHN, ON THE EASTERN SIDE OF THE HARBOR, AND TO SEWERAGE AND WATER SUPPLY OF PART OF THE CITY OF SAINT JOHN, AND PARISH OF PORTLAND, IN THE COUNTY OF SAINT JOHN."

Section.

1. Additional issue of Debentures authorized.
2. Payment of interest, annual expenses, and principal; how provided for.

Section.

3. Former Acts, how construed.
4. Salary of Chairman of Commissioners.

Passed 14th April, 1873.

WHEREAS by an Act made and passed in the thirty-third year of Her present Majesty's reign, intituled *An Act in further amendment of the Law relating to Sewerage in the City of Saint John, on the eastern side of the harbor, and to Sewerage and Water Supply of part of the City of Saint John and Parish of Portland, in the County of Saint John*, the Commissioners of Sewerage and Water Supply of part of the City of Saint John and Parish of Portland were authorized to issue certain Debentures to be called "Sewerage Debentures," to an amount not exceeding forty thousand dollars, and to appropriate the moneys raised by the sale of the said Debentures to the making, laying down,

and repairing of sewers, and opening natural water courses, and to provide for surface drainage from the public streets in that part of the City of Saint John lying on the eastern side of the harbor; and whereas the said sum of forty thousand dollars hath been expended by the said Commissioners in doing the work contemplated by the said Act, but the same is wholly insufficient effectually to carry out the said works, and a large additional sum is required for that purpose;

Be it therefore enacted by the Lieutenant Governor, Legislative Council, and Assembly, as follows:

1. The Commissioners of Sewerage and Water Supply of part of the City of Saint John and Parish of Portland, in the County of Saint John, are hereby authorized and empowered for the purposes mentioned in the third section of the said recited Act, to make an additional issue of Debentures, to be called "Sewerage Debentures," to an amount not exceeding fifty thousand dollars, to be charged, paid, and redeemed in the same manner as the Debentures, and interest thereof, issued under an Act of Assembly made and passed in the twenty-eighth year of the reign of Her present Majesty, intituled *An Act to amend the Law relating to Sewerage in the City of Saint John, on the eastern side of the harbor*, save that the Debentures to be issued under this Act shall be redeemable in forty years from the first day of May in the year of our Lord one thousand eight hundred and seventy-three.

2. To meet the interest of Debentures issued under this Act, and the annual expenses incident to the said works to be carried on under this Act, and incident to this Act, as well as to provide for the payment of the principal by a sinking fund, or otherwise, the said Commissioners are hereby empowered to order and direct a yearly assessment on that part of the City of Saint John lying on the eastern side of the harbor, and the inhabitants thereof, of a sum or sums of money in addition to any sum provided for under the said recited Act, 28 Vic., c. 28, and in addition to the said sum of forty thousand dollars provided for under the

said Act, 33 Vic., c. 85, not exceeding the sum of four thousand dollars in any one year, besides the costs of assessing and collecting, as shall be necessary therefor, the same to be assessed, levied, and collected under the provisions and according to the principles of "The Saint John Assessment Act of 1859," and the several Acts in force in amendment thereof, or according to the provisions of any Act for that purpose hereafter to be passed in relation to the collection of taxes in the City of Saint John, which sums shall from time to time, as collected, be paid over by the Collector or Receiver of Taxes for the said City to the said Commissioners of Sewerage and Water Supply.

3. All Acts heretofore made and passed relating to Sewerage and Water Supply for that part of the City of Saint John lying on the eastern side of the harbor, shall be construed together as one Act as nearly as possible, except when such construction would lead to contradiction; and the remedy for any damage done or loss in any way arising by reason of the prosecution of the works required to be done or carried on by the said Commissioners under this Act, or under any previous Act relating to the Sewerage and Water Supply of the said part of the City of Saint John or Parish of Portland aforesaid, is hereby declared to be and shall be according to the provisions of the fifteenth section of the Act of Assembly, 18 Vic., c. 38, and not otherwise.

4. That the salary of the Chairman of the said Commissioners shall be such sum as shall be fixed, ordered, and ordained from time to time by the Common Council of the City of Saint John, not to exceed two thousand dollars per annum.

XXXVIII VICTORIA.—CHAPTER 41.

AN ACT RELATING TO WATER SUPPLY IN THE CITY OF SAINT JOHN, ON THE EASTERN SIDE OF THE HARBOR, AND THE TOWN OF PORTLAND, IN THE COUNTY OF SAINT JOHN, AND TO SEWERAGE IN THE CITY OF SAINT JOHN, ON THE EASTERN SIDE OF THE HARBOR.

WATER SUPPLY.

Section.

1. Issue of Debentures authorized; amount.
2. Proceeds of Debentures; how applied.
3. Sixth section of Act, 28 Vic., c. 29, to be taken as part of this Act; general assessment to be made in case of deficiency.

SEWERAGE.

Section.

4. Additional issue of Debentures authorized; amount.
5. Interest on Sewerage Debentures, how paid.
6. Moneys raised by Sewerage Debentures, how applied.
7. Fee for permission to enter sewer.
8. Other Acts relating to Sewerage and Water Supply shall be taken as part of this Act when they do not conflict.

Passed 10th April, 1875.

BE IT ENACTED by the Lieutenant Governor, Legislative Council, and Assembly, as follows:

WATER, SUPPLY.

Whereas it has become necessary that the Commissioners of Sewerage and Water Supply for the City of Saint John (east) and the Town of Portland, in the County of Saint John, should extend and increase the Water Supply, and lay down additional main and service pipes in the City of Saint John (east) and the Town of Portland, in the County of Saint John, and make further improvements at the Works, in the Parish of Simonds, in the County of Saint John;

1. The Commissioners of Sewerage and Water Supply of part of the City of Saint John and Town of Portland, in the County of Saint John, are hereby authorized and empowered for the purposes mentioned in the second section of this Act, to make an additional issue of Water Debentures to an amount not exceeding one hundred and sixty thousand dollars, to be redeemed in forty years from the first day of May, in the present year, and

to be charged, paid, and redeemed in the same manner as the Debentures, and interest thereof, issued under an Act of Assembly made and passed in the eighteenth year of the reign of Her present Majesty, intituled *An Act to provide for an improved system of Water Supply and Sewerage of part of the City of Saint John and Parish of Portland, in the County of Saint John*, and the several Acts in addition thereto and in amendment thereof relating to Water Supply.

2. The moneys raised under this Act by the sale of Water Debentures as aforesaid, shall be appropriated to the laying down of water pipes in the City of Saint John and Town of Portland for the purpose of increased Water Supply, and also for the erection of gate houses at Lake Lattimer, Little River Reservoir, and old Westmorland Road, and for other purposes connected with making the system of Water Supply more efficient.

3. The sixth section of an Act made and passed in the twenty-eighth year of the reign of Her present Majesty, intituled *An Act relating to Water Supply in the City of Saint John and part of the Parish of Portland, in the County of Saint John*, shall be considered as forming part of this Act, and shall form part and shall extend and apply to this Act and any assessment to be levied thereunder.

SEWERAGE.

Whereas it is necessary for the purpose of more fully completing the system of Sewerage contemplated by the provisions of an Act made and passed in the twenty-eighth year of the reign of Her present Majesty, intituled *An Act to amend the Law relating to Sewerage in the City of Saint John, on the eastern side of the harbor*, that the work of Sewerage should be carried on from year to year; and whereas the several sums raised for that purpose by the sale of Sewerage Debentures, authorized by the last recited Act, and the Act 33 Vic., c. 85, and the Act 36 Vic., c. 73, have been expended by the Commissioners in performing the work contemplated by the said several Acts, and an additional

sum is required for the purpose of more effectually carrying on the said work ;

4. The Commissioners of Sewerage and Water Supply of part of the City of Saint John and Town of Portland, in the County of Saint John, are hereby authorized and empowered, for the purposes mentioned in the sixth section of this Act, to make an additional issue of Debentures, to be called "Sewerage Debentures," to an amount not exceeding two hundred thousand dollars, to be charged, paid, and redeemed in the same manner as the Debentures, and interest thereof, issued under an Act of Assembly made and passed in the twenty-eighth year of the reign of Her present Majesty, intituled *An Act to amend the Law relating to Sewerage in the City of Saint John, on the eastern side of the harbor*, save that the Debentures to be issued under this Act shall be redeemable in forty years from the first day of May, in the present year.

5. To meet the interest of Sewerage Debentures issued under this Act, and the annual expenses incident to the said Sewerage Works to be carried on under this Act, and incident to this Act, as well as to provide for the payment of the principal by a sinking fund, or otherwise, the said Commissioners are hereby empowered to order and direct a yearly assessment on that part of the City of Saint John lying on the eastern side of the harbor, and the inhabitants thereof, of a sum or sums of money in addition to any sums provided for under the said recited Act, 28 Vic., c. 28, and in addition to the sum of forty thousand dollars provided for under the Act 33 Vic., c. 85, and in addition to the sum of fifty thousand dollars provided for under the Act, 36 Vic., c. 73, not exceeding the sum of sixteen thousand dollars in any one year, besides the costs of assessing and collecting, as shall be necessary therefor ; the same to be assessed, levied, and collected under the provisions and according to the principles of "The Saint John City Assessment Act of 1859," and the several Acts in force in amendment thereof, or according to the provisions of any Act for that purpose hereafter to be passed in re-

lation to the levying and collecting of Rates and Taxes in the City of Saint John; which sums shall from time to time, as collected, be paid over by the Collector and Receiver of Taxes for the said City to the said Commissioners of Sewerage and Water Supply.

6. The moneys raised under this Act by the sale of Sewerage Debentures as aforesaid, shall be appropriated to the making, laying down, and repairing of sewers and opening natural water courses, and to provide for surface drainage from the public streets in that part of the City of Saint John lying on the eastern side of the harbor.

7. Notwithstanding anything contained in the fifth section of the Act passed in the twenty-eighth year of the reign of Her present Majesty, intituled *An Act to amend the Law relating to Sewerage in the City of Saint John, on the eastern side of the harbor*, the fee and sum of money to be paid by any person to whom permission in writing may, by the Chairman of the Commissioners, be granted under the said Act to enter any sewer, shall not be less than the sum of five dollars.

8. All Acts heretofore made and passed relating to Sewerage and Water Supply for that part of the City of Saint John lying on the eastern side of the harbor, shall, with this Act, be construed together as one Act as nearly as possible, except when such construction would lead to contradiction; and the remedy for any damage done, or loss in any way arising by reason of the prosecution of the works required to be done or carried on by the said Commissioners under this Act, or under any previous Act relating to the Sewerage and Water Supply of the said part of the City of Saint John or Town of Portland aforesaid, is hereby declared to be and shall be according to the provisions of the fifteenth section of the Act of Assembly, 18 Vic., c. 38, and not otherwise.

XLI VICTORIA.— CHAPTER 13.

AN ACT RELATING TO WATER SUPPLY AND SEWERAGE IN THE CITY OF SAINT JOHN AND TOWN OF PORTLAND, IN THE CITY AND COUNTY OF SAINT JOHN.

Section.

1. Annual deficit of revenue to be funded and charged to account for Water Supply or Sewerage; proviso; revision and amendment of assessment authorized.
2. If assessment be filed before 1st December to be valid.
3. Accounts for current year to be filed by 1st March next.
4. Provisions of sections 2 and 3 to apply only to amount for current year.

Section.

5. When new Debentures may be issued.
6. When payment of coupon may be made.
7. Debentures under this Act to be good.
8. Non-liability of Commissioners.
9. To what amount deficit of revenue may be funded, and how.

Passed 5th September, 1877.

WHEREAS by the conflagration which occurred in the City of Saint John on the twentieth day of June last past, a very large proportion of the property, both real and personal, ratable under the Act of the General Assembly of this Province made and passed in the eighteenth year of the reign of Her present Majesty, chapter thirty-eight, intituled *An Act to provide for an improved system of Sewerage and Water Supply of part of the City of Saint John and Parish of Portland, in the County of Saint John*, and the several Acts of the said General Assembly in amendment thereof or relating to such Sewerage and Water Supply, has been destroyed, and other ordinary sources of the revenue applicable to the purposes of the said Acts have been greatly impaired, whereby a large deficit in the annual revenue derivable from the ordinary yearly assessments and other sources of revenue under the said Acts will be occasioned, too onerous to be recouped by assessment under the ordinary powers of the Commissioners of Sewerage and Water Supply;

Be it therefore enacted by the Lieutenant Governor, Legislative Council, and Assembly, as follows:

1. That during the current fiscal year and so long afterwards as the annual revenue derivable from the ordinary yearly assess-

ments and other sources of revenue under the said Acts shall fall short of the annual requirements of the Commissioners of Sewerage and Water Supply under the said Acts for the payment of interest, the expense of maintenance, and the other ordinary expenditure now authorized by any Act or Acts of the General Assembly of this Province, such annual deficit shall be funded by the Commissioners, and shall be charged from time to time to the appropriate Capital Account for Water Supply or Sewerage, as the case may be, of the said Commissioners, and shall be met and paid by and from the proceeds of the sale from time to time as occasion may require, of Debentures to be issued by the said Commissioners under the authority in that behalf in the tenth section of this Act contained; provided however, that nothing in this Act contained shall be construed or deemed to limit, derogate from, or annul any of the powers or authority to order assessments to meet any deficiency of annual revenue now vested in the said Commissioners in and by the sixth section of the Act made and passed in the twenty-eighth year of the reign of Her present Majesty, chapter twenty-nine, intituled *An Act relating to Water Supply in the City of Saint John and part of the Parish of Portland, in the County of Saint John*, or any other Law now in force in that behalf, but that the provision in that behalf herein contained shall be construed and deemed to be in addition to any powers or authority in that behalf by any law in the said Commissioners now vested.

And whereas the destruction of property by the said conflagration has rendered necessary a revision and amendment of a large part of the assessment under the said Acts for the current year, and it is impossible to prepare and file the assessments so demanded and the accounts which by law the Commissioners are required to prepare and file within the several times now prescribed by law for that purpose;

Be it therefore enacted by the authority aforesaid:

2. That the assessments made, or to be made, by the Commissioners under the said Acts for the current fiscal year shall, if a

copy of the book containing the assessment for such current fiscal year be filed in the office of the Common Clerk of the said City of Saint John on or before the first day of December next, be to all intents and purposes as good, valid, sufficient, and binding in law as if the same had been filed at the time now by law prescribed and required.

3. The accounts for the current fiscal year, mentioned in the second section of the Act made and passed in the twenty-fifth year of the reign of Her present Majesty, chapter forty-three, intituled *An Act in further amendment of the Law relating to Water Supply and Sewerage in the City of Saint John, and part of the Parish of Portland, in the County of Saint John*, and all other accounts of the said Commissioners, whether for Water Supply or Sewerage for the current fiscal year, and up to the first day of March next, shall be made up to the said first day of March next, and such of said accounts as are by law required to be filed in the Common Clerk's Office, shall be so filed in the same manner as is in the said last recited section mentioned and provided as to the accounts therein mentioned.

4. The provisions of the last two next preceding sections of this Act shall apply respectively only to the assessment for the current year, and the accounts up to the said first day of March next, after which time the assessments and accounts shall be made and filed at and up to the times and in the manner heretofore accustomed.

And whereas it is expedient to provide for the relief of the persons who, at the time of the happening of the said conflagration, were the *bona fide* holders of any Debentures or coupons issued by the said Commissioners, whether on account of Sewerage or Water Supply, which may have been destroyed in the said conflagration, and to authorize the issue of new Debentures in substitution of any Debentures so destroyed, as hereinafter provided;

Be it therefore further enacted by the authority aforesaid:

5. That it shall and may be lawful for the said Commissioners,

and they are hereby authorized (but they shall not in any case be liable or compellable so to do) on the application of any person made on or before the thirty-first day of December, in the year of our Lord one thousand eight hundred and seventy-eight, alleging that he was at the time of the happening of the said conflagration the *bona fide* holder of any such Debenture, and that the same was destroyed in the said conflagration, and on production to them of proof satisfactory to them that the applicant was at the time of the happening of the said conflagration the *bona fide* holder of such Debenture, that such Debenture was destroyed in the said conflagration, and upon the applicant giving to the said Commissioners security, either real or personal, to the satisfaction of the Commissioners, for the indemnity of the said Commissioners, and their successors, and all other persons and bodies corporate, and their property, against the claims or demands of any and every other person or persons upon the said Debenture, and the coupons for interest thereon, and upon further proof, to their satisfaction, of the amount of such Debenture, and the time of payment thereof, and also, whenever practicable, of the number of such Debenture, to issue and deliver to the applicant a new Debenture, with coupons, for the like amount and payable at the same time and bearing the like rate of interest as the Debenture so alleged to be destroyed, and at maturity thereof to pay the same.

6. That it shall also be lawful for the said Commissioners, and they are hereby authorized (but they shall not in any case be liable or compellable so to do), on the application of any person alleging that he was, at the time of the happening of the said conflagration, the *bona fide* holder of any such coupon, and that the same was lost or destroyed in the said conflagration, and on production to them of proof satisfactory to them that the applicant was, at the time of the happening of the said conflagration, the *bona fide* holder of such coupon; that such coupon was lost or destroyed in the said conflagration; and also, whenever practicable, of the number of the Debenture to which such cou-

pon was attached and belonged, and upon the applicant's giving to the Commissioners security, either real or personal, to the satisfaction of the Commissioners, for the indemnity of the Commissioners and their successors and all other persons and bodies corporate, and their property, against the claims or demands of any and every other person or persons upon such coupon, to pay the amount thereby made payable according to the tenor thereof, to the person so claiming, proving, and giving security as aforesaid.

7. Any Debentures issued by the Commissioners under the fifth section of this Act shall be as good, valid, and binding in law, and shall be charged, paid, and redeemed in the same manner as any other Debentures issued by the said Commissioners, and shall be placed by them to a separate account, to be by them kept for that purpose, and shall be countersigned by the Chamberlain of the City of Saint John in the usual manner, and the same shall be numbered respectively with the numbers respectively of the Debentures in lieu of which they shall be issued, and shall take the place thereof in the record of Debentures kept by the said Chamberlain, and such Debentures, and each coupon thereto attached, shall be marked with letters or numbers by the Commissioners before they are issued, so as to be clearly distinguishable from their regular issue of Debentures and coupons.

8. The Commissioners shall not, nor shall any of them, incur any liability whatever by the exercise by them or any of them *bona fide* of the discretion and powers hereby to them given and in them vested, or any or either of them, and they shall not be answerable the one for the other of them, nor for the acts, defaults, or misdoings of each other.

And whereas it is necessary to make provision for funding the deficit in the first section of this Act mentioned;

And whereas also it is expedient to provide for the reconstruction of the Reservoir and Buildings and other Works of the said Commissioners in the said City of Saint John destroyed by the said conflagration;

Be it therefore further enacted by the authority aforesaid :

9. That for the purpose of funding the deficit in the first section of this Act mentioned, and of promoting the efficiency of the Works of the Commissioners as aforesaid, and for other purposes in the preamble to this section mentioned, the Commissioners are hereby authorized and empowered from time to time, as to them shall seem necessary or expedient, to make a further issue of Debentures on account of Water Supply, as the exigencies of such service may require, with coupons for interest at the rate of six per centum per annum, payable half-yearly, redeemable at the expiration of any period or periods in the discretion of the Commissioners, not exceeding forty years from and after the passing of this Act, to an amount not exceeding fifty thousand dollars of lawful money of Canada, in addition to the usual amounts already authorized by law to be issued by them, and to be issued, charged, paid, and redeemed in the same manner as the Debentures, and the interest thereof, issued under the said before mentioned Act made and passed in the eighteenth year of the reign of Her present Majesty, chapter thirty-eight, intituled *An Act to provide for an improved system of Sewerage and Water Supply of parts of the City of Saint John and Parish of Portland, in the County of Saint John.*

10. This Act may be known and cited for all purposes as "The Saint John Water Supply and Sewerage Amendment Act of 1877."

XXII VICTORIA.—CHAPTER 37.

AN ACT RELATING TO THE LEVYING, ASSESSING, AND COLLECTING
OF RATES IN THE CITY OF SAINT JOHN.

Section.

1. Corporation to determine amounts to be assessed.
2. Detailed estimates to be made by the Common Council.
3. Assessors to be annually appointed.
4. Clerk to Board of Assessors to be appointed.
5. Assessors and Clerk to be sworn.
6. Subject to penalty for refusal to act.
7. Assessors to assess all taxes.
8. Meaning of terms "City Taxes" and "County Taxes."
9. Notice to be published by the Assessors.
10. Time allowed for rate-payers to make returns.
11. Assessors to enter in a book names of persons, &c., ratable.
12. Special directions as to assessments.
13. Mortgagor in possession to be deemed the owner.
14. Joint Stock Companies to be assessed.
15. Agent to be assessed for his income; and to inform as to income of Company.
16. Stockholders not ratable as such.

Section.

17. Property left by deceased persons, owned by married women, &c., how to be rated.
18. Meaning of terms "Real" and "Personal" Estate.
19. Assessment legal, though 10 per cent. in excess.
20. Appeal in cases of over-assessment.
21. Assessors and Clerk may search Office of Registrar of Deeds and Wills.
22. Recovery of assessments in cases of delay.
23. Recovery of assessments from non-residents within the City and County.
24. From non-residents within the Province.
25. Recovery of assessments due at the passing of this Act.
26. Recovery of penalties.
27. Short title of this Act.
28. Assessments, present and future, to be collected under this Act.
29. Common Council may make ordinances as to assessments, &c.
30. Inconsistent Acts repealed.

Passed 13th April, 1859.

BE IT ENACTED by the Lieutenant Governor, Legislative Council, and Assembly, as follows:

1. The Mayor, Aldermen, and Commonalty of the City of Saint John, shall have power on or before the first day of April in each year, to determine and direct what sum of money shall be raised and levied in the City of Saint John, for the following purposes:

The maintenance of the Police Establishment on the eastern side of the harbor;

For the scavenger work on the east side;

For lighting the streets;

For making, repairing, altering, and improving the streets, squares, bridges, and highways, and the old Burying Ground, on

the eastern side of the harbor, not exceeding the sum of three thousand pounds ;

For like purposes on the western side, not exceeding the sum of one thousand pounds ;

For the maintenance of the Fire Department on the eastern side of the harbor, including the erection and keeping in repair a sufficient number of proper fire hydrants, not exceeding the sum of one thousand five hundred pounds ;

For the maintenance of the Fire Department on the western side of the harbor, not exceeding five hundred pounds ; which sums shall not be used or appropriated for any other than the purpose for which they are severally assessed.

2. Separate detailed estimates shall be made up by the Common Council of the said City, of the amount of money required for the above, or any other objects for which they may be authorized to levy an annual assessment, and approved of previous to their ordering any such assessment.

3. The Common Council shall annually, in the month of March, appoint a Board of three Assessors, not being members of the Common Council, or holding any office of emolument under the Government, and may, at their discretion, at any time remove any of them from office, and fill any vacancy that may occur during the year in such Board by death, removal from office, or otherwise.

4. The Common Council shall annually appoint a Clerk to the Board of Assessors, who shall hold his office during the pleasure of the Common Council.

5. The Assessors and the Clerk shall be severally sworn to the faithful discharge of their respective duties before the Mayor, Recorder, one of the Aldermen, or the Common Clerk.

6. Any person appointed an Assessor or Clerk as aforesaid, who shall neglect to serve and to become qualified, or having become qualified shall be guilty of any neglect of duty, shall forfeit and pay the sum of five pounds.

7. The Assessors shall make all assessments of City Taxes and

of County Taxes chargeable on the City, and all warrants of such assessments shall be directed to them.

8. The term "City Taxes" shall be construed to mean all such rates and assessments as shall be imposed by the Common Council upon the City, or any district thereof, by virtue of any Act or Acts of Assembly; and the term "County Taxes" shall be construed to mean all such rates, taxes, and assessments as shall be imposed by the Court of Sessions upon the City of Saint John, by virtue of any Act or Acts, for any public purpose of the City and County.

9. The Assessors shall forthwith, after receiving their appointments and becoming qualified, cause public notice of their appointment to be given, by posting up notices in at least six public places in the City, and also by publishing the same in two or more of the city newspapers, in the following form :

The undersigned having been appointed Assessors of Taxes for the City of Saint John, hereby give notice thereof, and that persons intending to furnish statements of their property and income, in pursuance of the provisions of *The Saint John City Assessment Act of 1859*, must do so within thirty days from the publication of this notice.

Dated this day of A. D.

A. B.

C. D.

E. F.

10. After the publication of such notice, thirty days shall be allowed to any person to be rated, or his agent to furnish the Assessors with a written detailed statement, under oath, made before a Justice, of his real estate within the City or District to be taxed, and of his personal estate and income, specifying therein the value of such real estate at its current market value, and the amount of his income, and the amount of his personal estate, after deducting from such personal estate the just debts which he may owe; and the Assessors shall value the real and personal estate and income of the inhabitants, and the real estate of the non-residents, according to the respective statements so made to them, and verified as aforesaid, and no more.

11. The Assessors shall, without delay, after receiving any Warrant of Assessment, meet and enter in a book to be provided at the public expense, the names of all persons to be rated in the said City, and shall distinguish therein in separate columns, the real estate, personal estate, and income of each person; and shall also make up and enter therein the total amount of City Taxes for all purposes in one column, and the total amount of County Taxes in another column.

12. All rates levied or imposed upon the said City, shall be raised by an equal rate upon the value of the real estate situate in the City or District to be taxed, and upon the personal estate of the inhabitants, wherever the same may be, and also upon the amount of income or emolument derived from any office, place, occupation, profession, or employment whatsoever within the Province, and not from real or personal estate of the inhabitants of the said City, including persons made or declared to be residents or inhabitants by any Act or Acts of Assembly now or hereafter to be in force relating to the impositions of rates, and also upon the capital stock, income, or other thing of Joint Stock Companies or Corporations as hereinafter provided. For the purposes of this Act the value of all real and personal estate and joint stock shall be deemed and taken to be, and shall be put down at one-fifth of the actual worth thereof, as nearly as the same may be ascertained; provided always, that a portion of the assessment for making, repairing, altering, and improving the streets, squares, bridges, and highways, shall be raised by a tax of five shillings upon the poll of all male inhabitants of the said City, of the age of twenty-one years and upwards, not being in indigent circumstances.

13. In cases of mortgaged real estate, the mortgagor shall, for the purpose of assessment, be deemed to be the owner until the mortgagee shall have taken possession, after which the mortgagee shall be deemed and taken to be the owner.

14. All Joint Stock Companies or Corporations shall be assessed under this Act in like manner as individuals; and for the

purposes of such assessment, the President or any Agent or Manager of such Joint Stock Company or Corporation, shall be deemed to be the owner of the real and personal estate, capital stock, and assets of such Company or Corporation, and shall be dealt with and may be proceeded against accordingly; and the principal place of carrying on the business and operations of any such Company or Corporation shall be deemed to be the place of inhabitancy of such Company or Corporation, and of such President, Agent, or Manager; and such President, Agent, or Manager shall, in regard to the real and personal estate, income, or other thing of such Company or Corporation, be assessed separately and distinctly from any other assessment to which he may be liable; and he may charge against and recover from such Company or Corporation, the amount of any assessment which he may be required to pay on account of such Company or Corporation under the provisions of this Act; provided that nothing in this Act shall render liable to such assessment the real or personal estate, income, or other thing of the City Corporation, or of any religious, charitable, or literary institution.

15. The Agent or Manager of any Joint Stock Company or Corporation established abroad, or out of the limits of this Province, who shall carry on business for such Company or Corporation in the City of Saint John, shall be rated and assessed in like manner as any inhabitant upon the amount of income received by him as such Agent; and for the purpose of enabling the Assessors to rate such Company or Corporation, the said Agent or Manager shall, when required in writing by the Assessors so to do, furnish to them a true and correct statement in writing, under oath, setting forth the whole amount of income received in the City of Saint John during the fiscal year [of said Companies] preceding the making up of the annual assessments. In the event of refusal on the part of such Agent or Manager to furnish the required information, the Assessors shall, within ten days after such application therefor, rate and assess the said Agent or Manager according to the best of their knowledge, sub-

ject, however, to the right of the said Agent or Manager to appeal from such assessment as aforesaid. For the purposes of this section, the Agent or Manager shall be deemed the owner of such income, and shall be dealt with accordingly, but he may recover from the Company or Corporation he represents any assessment he may be called upon to pay on such income as aforesaid; such assessment shall be made separately and distinctly from any other assessment to which such Agent or Manager shall be liable; provided, however, that the assessment on Insurance Companies, or the Agent or Manager of any Insurance Company established abroad, shall be taken on a three years' average of the yearly net profits on insurance of property situated within the said City, or for the whole period for which they may have been doing business in said City, not exceeding three years, such average to be obtained as follows: The Agents shall each year furnish the Assessors with a statement, in writing, of the aggregate net profits of insurance of property situated within the City, for the three years next preceding that in which the assessment is to be made, or for the whole period for which they may have been doing business in said City, not exceeding three years; provided further, that Life Insurance Companies, or their Agencies, shall be free from assessment under this Act.

16. No stockholder of any Joint Stock Company or Corporation liable to be rated under this Act, shall be assessed in respect of any property in or income derived from such Company or Corporation.

17. The estate of deceased persons under control of their executors, administrators, or trustees, the separate property of married women, and the property of minors, or other property under the control of agents or trustees, may be rated in the name of the principal party or parties ostensibly exercising control over them, but under such description as will keep the rating separate and distinct from any assessment on such parties in respect of property held in their own right.

18. In this Act the term "Real Estate" shall be deemed to

signify land, and any buildings or other erections upon land, or any term or terms of years, or present beneficial and productive interest in land; and the term "Personal Estate" shall be deemed to signify all goods, chattels, moneys, capital, and effects, and any share or interest therein, and all goods, debts, whether due upon accounts or upon any contract, promissory note, or bond and mortgage, and all public stocks and securities, and any share or interest therein, not being stock in any Joint Stock Company or Corporation within this Province.

19. In every assessment now or hereafter to be made, such assessment shall be deemed and taken to be legal, although the aggregate amount thereof shall exceed the sum so ordered to be assessed, provided such excess be not more than ten per centum on the sum so ordered.

20. Any person thinking himself aggrieved by any assessment for City Taxes, may appeal, by petition, under oath, made before a Justice, to the Assessors, who shall duly consider the same; and if they shall deem the party entitled to relief, the Assessors shall make such alteration in their assessment as to them shall appear to be just and right. In case the appellant be not satisfied with the decision of the Assessors, he may appeal to the Common Council, who may either affirm the first or the amended assessment, or otherwise deal with the matter, and their decision shall be final; provided that no such appeal shall be heard or received by the Common Council unless the said petition, under oath, or a duplicate thereof, be filed in the Common Clerk's office within thirty days after the announcement of the assessment.

21. The Assessors and their Clerk shall have liberty to search the office of Register of Deeds for the City and County of Saint John, to ascertain the amount of property owned by any persons liable to assessment, and the Registrar shall receive for all searches from the Assessors connected with any one individual's property, the sum of one shilling, and no more; which sum so paid by the Assessors shall be allowed and repaid them in addition to any other allowance; provided that such Assessors and Clerk shall

only be permitted to search between the time of their appointment and the making of the assessment.

22. If any person assessed shall not pay the amount for which he is liable, either on his own account or in a representative capacity, or if the personal or legal representative of any person assessed, in case of the death of such person before the payment of the assessment, shall not pay the amount of such assessment within ten days after such notice or demand, the Receiver of Taxes may make application to the Police Magistrate of the said City, and upon production of a certificate purporting to be signed by the said Receiver, of the amount of the assessment, and that the same, or any part thereof, is due and unpaid, the Police Magistrate shall order and adjudge the person assessed, or his representative as aforesaid, to pay the amount due; and thereupon execution, with costs, may be issued and levied against the goods and chattels, or against the body of the person adjudged to pay the said amount, with the same effect as any execution issued by the said Police Magistrate; provided that no person shall be imprisoned more than one day for every two shillings of the amount of the judgment.

23. When the person made liable to pay any assessment under this Act, shall not reside within the City and County of Saint John, the Receiver may sue for the same in his own name, before any Justice in any County where such person may reside; and the like certificate, as in a proceeding before the said Police Magistrate, shall be sufficient evidence of the assessment, and of the amount due thereon, and execution for such amount, and costs, shall be issued with the like effect as any execution out of a Justice's Court.

24. When the person made liable to pay any assessment shall not reside within the limits of this Province, or his place of residence shall be unknown to the said Receiver, the Receiver shall cause public notice to be given of such rate and assessment by advertisement in one or more of the public newspapers published in the said City; which advertisement shall be continued for

three months, unless some person shall within that time appear and pay to the said Receiver such rate and assessment, with the costs of the publication of such notice; and in case no person shall pay the same, it shall be lawful for the said Police Magistrate, on the application of the said Receiver, by warrant under his hand and seal, to order the sheriff of the City and County of Saint John to sell at public auction, to the highest bidder (first giving thirty days public notice of such sale), so much of the real estate in respect of which such assessment shall have been made, as may in his judgment be sufficient to pay such rate or assessment, with all the costs and charges attending the recovery of the same, retaining the overplus, if any, for the use of such owner; and the said sheriff is hereby empowered and directed to sell the same, and to execute a deed to the purchaser thereof, his heirs and assigns, and to deliver seizin and possession thereof; which deed shall pass all the right, title, and interest of the person assessed, of and in the property so sold.

25. The Receiver shall have power to collect all such City Taxes and County Taxes as may be outstanding and unsettled at the time of the passing of this Act, and may give the like notice in respect thereto, and take the same proceedings for the collection thereof as herein provided for assessments made under this Act.

26. All penalties imposed by this Act may be recovered before the Police Magistrate of the said City, and levied by distress and sale of the goods and chattels of the offender, by warrant, under the hand and seal of the Police Magistrate as aforesaid, and paid into the hands of the Chamberlain for the use of the City Corporation.

27. This Act may at all times be referred to and designated as "The Saint John City Assessment Act of 1859."

28. All assessments which now are or may hereafter be required to be levied annually in the said City, shall be levied, assessed, and collected under the provisions and according to the principles of this Law, any thing in any Law now in force to the contrary notwithstanding.

29. That the Common Council be and are hereby authorized to make such bye-laws and ordinances for the making, levying, and collecting of all assessments ordered by the Common Council, as they may from time to time deem necessary and expedient; and also be empowered to make bye-laws for the government of the Assessors, their Clerk, and the Receiver of Taxes, and to order and direct the mode in which they shall execute their duties, and to impose penalties for the enforcing thereof, not in any one case exceeding ten pounds; provided that no bye-law or ordinance shall be repugnant to any part of the spirit and meaning of this Act.

30. So much or such parts of any Law now in force relating to levying, assessing, or collecting of rates in the City of Saint John, as are inconsistent with this Act, are hereby repealed, except as to any thing done, pending, or in progress and undetermined under and by virtue thereof; provided that this Act is not in any way to effect the liability of the Collector of Taxes, or his sureties, as respects any thing done or omitted, or any default made or to be made by him.

BYE-LAWS AND ORDINANCES.

BE IT ORDAINED:

1. If any person shall open any hydrant in the City of Saint John or Parish of Portland, or lift or remove the cover of any hydrant, without the permission of the Board of Commissioners, or of their Superintendent of Works (except in case of fire), he shall be liable to a penalty of forty shillings.

2. If any person shall make any opening in or connection with any pipe, without the license mentioned in the preceding section, he shall be liable to a penalty of forty shillings.

3. If any person shall turn on or shut off the water in any of the pipes, without the license mentioned in the first section, he shall be liable to a penalty of forty shillings.

4. If any person shall obstruct or prevent access to any stop-cock connected with the pipes, by placing over it any building materials or other hindrance, or in any way do any act or thing to prevent access to or the use of any hydrant, he shall be liable to a penalty of forty shillings, and the like penalty for each day the same shall remain after notice from the Commissioners, or their officers, to remove the obstruction.

5. If any person shall take or carry away water from any hydrant in any hogshead, barrel, or vessel containing more than five gallons, without the consent of the Commissioners, or use the water from the hydrants for watering horses or cattle, or washing carriages, or for building or manufacturing purposes, he shall be liable to a penalty of ten shillings for each offence.

6. If any person shall sell or dispose of water from the Works

of the Commissioners, without a license from or agreement with the Board, he shall be liable to a penalty of twenty shillings for each offence.

7. If any person, owning or occupying premises where water supply is provided and led thereto, shall appropriate or make use of the water for steam engines, factories, bathing rooms, or hotels, or for building purposes, without first agreeing with the Commissioners for the use thereof, he shall be liable to a penalty of twenty shillings for each offence, and the water supply shall be shut off the premises until an agreement has been made with the Commissioners for the supply of the aforementioned specialties.

8. If any person shall take or use the water for building purposes, boilers, or any trade or factory, without the express consent of the Board, he shall be liable to a penalty of twenty shillings for each offence.

RULES AND REGULATIONS.

1. Application for service pipes must state full and truly all the purposes for which the water is required, the annual rental or value of the premises, the number of occupants or tenants, and the number of taps or hydrants intended to be placed.

2. Whenever a service pipe has been laid, the proprietor of the premises must continue the same without delay into the premises, safely and securely, from frost or injury ; if led through basement or cellar walls, after opening thereof, to build up and plaster around the pipes, and take such other precautions to make the work frost proof as the Superintendent of Works shall require.

3. To every supply pipe inside of the premises, there must be a substantial waste tap, attached as close as practicable to the wall or pipe entrance, with a screw coupling connection and an iron rod key of not less than two feet in length placed upon the said waste tap, the whole at this point to be carefully boxed up and filled in with bran or sawdust, so that in cold weather the water in the pipe, where it enters the premises, may be securely protected from frost, and enabling the occupants to shut off the water at the waste tap, and draw therefrom during cold weather, by the rod key.

4. In premises without cellar walls, or built on a level with the street, inside excavation must be made sufficiently broad and deep to continue inside the service pipe and waste tap connection beneath the reach of frost, affixing to the waste tap an iron rod key of sufficient length, and placing the same so as to shut off the water at this point, within the premises, during cold weather.

5. All inside pipes and fixtures must be selected and the work done by competent and experienced plumbers (approved of or licensed by the Board of Commissioners) to the satisfaction of the Superintendent of Works.

6. Hydrants or taps placed in yards, alleys, or exposed places, must be housed over, and in no case will water from any premises be permitted to flow over the sidewalks or street, or upon the property of others to their injury or annoyance.

7. No waste of water or unnecessary flowage from any tap or hydrant will be permitted; and there shall be no concealment of the purpose for which it is used.

8. Water takers must keep all pipes and fixtures within their premises, including any area beneath the sidewalks, in good repair, and sufficiently protected from frost.

9. No person shall make an alteration in any of the pipes or fixtures, except by permission of the Commissioners.

10. The officers of the Board, personally, and every person delegated by them for the purpose, to have free access at proper hours of the day to all parts of every building and steam vessel in which water from the Works is delivered and consumed.

11. Special application for the use of hose, baths, water closets, urinals, or extra purposes, must be made at the Commissioners' Office, and no branch pipe attached to any hose used for washing windows, or unspecified purpose shall have an orifice larger than $\frac{3}{8}$ of an inch in diameter, nor will it be permitted to use a hose to wash off coaches, omnibusses, or other vehicles, without a special agreement therefor, nor to be converted into jets, or the water suffered to run to waste, or leak, or used to wash the filth of gutters down on neighbors, or into sewers, or used to throw floods of water on sidewalk platforms, or streets, but merely to sprinkle them.

12. In premises where there are tenants or occupants supplied for hotels, manufactories, bathing rooms, or steam engines, by agreement with the Board, the owner or leaseholder must provide a separate supply pipe for each tenant or occupant, or be liable

to have the water shut off the whole premises for any breach of agreement, arrearages, or violation of any bye-law, ordinance, rule or regulation of the Board on the part of the tenants or occupants so specially supplied.

13. The Commissioners may, whenever they deem it necessary, in order to determine the consumption of water in any premises supplied, place meters on any supply pipe.

14. The penalty for a violation of any of the Commissioners' Rules and Regulations and requirements (in addition to any fine that may be imposed under any bye-law or ordinance) will be the prompt stoppage of the supply of water; nor will it be restored except on the payment of the expense of shutting it off and turning it on, and a satisfactory understanding with the parties that no future cause of complaint shall arise; and it shall be the duty of the Chairman strictly to enforce all bye-laws, ordinances, rules and regulations established and adopted by the Board.

DECISION OF THE SUPREME COURT.

THE QUEEN

vs.

THE COMMISSIONERS OF SEWERAGE AND WATER SUPPLY FOR
PART OF THE CITY OF ST. JOHN AND PARISH OF PORTLAND.

February 8th, 1867.

THE Act, 2 Wm. 4, c. 26, incorporating the Saint John Water Company, authorized them to draw water from, erect reservoirs on, and carry pipes through private property, provided that no such water should be drawn, etc., without compensation being paid for the use of the same, and for any damages sustained by the operations of the Company, and in case of disagreement between the Company and the owners of the land, the compensation to be determined by arbitration; and if the owner of the property should decline to appoint an arbitrator, the Supreme Court, on application of the Company, should issue a warrant to the sheriff to summon a jury to assess the amount to be paid.

By Act, 12 Vic., c. 51, further powers were given to the Company to enter on private property, erect dams, and draw water from any stream, on paying compensation to the owners, the amount to be determined as by the Act 2 Wm. 4, c. 26. After the passing of this Act, the Water Company erected a dam upon a stream flowing through private property, laid down pipes, and diverted the water from its natural channel without the consent of the owners.

By Act, 18 Vic., c. 38, all the property, rights, powers, and privileges of the Water Company were vested in Commissioners appointed under this Act, saving to all parties all rights, remedies, and actions for any act done, or for any contract theretofore made, and giving the Commissioners power to lay down pipes, etc., for extending the supply of water; and providing that in case of damage done in the execution of the works, the Commissioners should pay the party sustaining the
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same such compensation as should be agreed upon, and in case they could not agree, the Commissioners should, on request of such party, apply to a Justice of the Peace for a warrant to the sheriff to summon a jury to assess the damages. The Commissioners continued the obstruction placed on the stream by the Water Company, and laid down additional pipes, drawing off a much larger quantity of water.

A, claiming as one of the heirs of the former owner, then gave notice to the Commissioners that he claimed damages under the Act 2 Wm. 4, c. 26, and the several Acts in amendment and incident thereto, for abstraction of the water by the Commissioners, and requested them to take the necessary steps for summoning a jury to assess such damages. The Commissioners declined to take any steps, and A gave them a further notice, stating that they had refused to agree upon the amount of compensation for obstructing the stream and diverting the water, and requiring them to take the necessary and legal steps pointed out by the Acts 2 Wm. 4, c. 26, 12 Vic., c. 51, and 18 Vic., c. 38, or any of them, for determining the amount of compensation to be paid for all or any damage which he was entitled to receive in his own right, or in behalf of the other heirs, as well for the acts of the Saint John Water Company as of the said Commissioners. The Commissioners declined to take any proceedings on this application, stating that they were not aware that any damage had been done to A by their operations. Held, on application by A for a *mandamus*,

1. That the Commissioners were right in refusing to act on the first notice; the mode of proceeding under the Acts 2 Wm. 4, c. 26, and 12 Vic., c. 51, being by arbitration and not by a jury.
2. That the Commissioners had no power to act under the 2 Wm. 4, c. 26, even if they had been requested to take the proceedings pointed out by that Act.
3. That as all rights and remedies against the Water Company were preserved by the 18 Vic., c. 38, the Commissioners were not bound to apply for a jury to assess damages for the acts of the Water Company, as required by the second notice.
4. That without showing who the other owners of the property were, and how A was entitled to claim on their behalf, a *mandamus* could not be issued to assess the damages due to them, but must be confined to A's interest in the land.
5. That it was sufficient for A to show by his affidavits a *prima facie* case of title to the land, and that he need not produce his deeds.
6. That the allegation of the withdrawal from its natural course of a

large quantity of water from a stream flowing through A's land, showed a *prima facie* case of damage to him.

7. That a demand in the alternative to do one of two things, and a general refusal, was sufficient to found an application for a *mandamus* if the applicant was entitled to part of what he claimed.
8. That a request to a public officer to take the necessary and legal steps pointed out by an Act of Assembly to assess damages for an injury done to the applicant's property under the authority of the Act was sufficiently specific.
9. That an objection that there had been no sufficient demand could not be taken after the merits of the application had been discussed.
10. That where an application for a *mandamus* fails because there was no demand and refusal, it cannot, as a general rule, be renewed after a demand, though there may be circumstances warranting a departure from this rule.

THIS was an application for a *mandamus* to the Commissioners of Sewerage and Water Supply of the City of Saint John, to compel them to proceed under the Act 18 Vic., c. 38, to assess the damages claimed by the applicant, Amos E. Botsford, in consequence of the works of the Commissioners in carrying out the provisions of the Act. The facts are fully stated in the judgment of the court.

A rule *nisi* having been granted in Easter Term last,

Watters, Q.C., showed cause in Trinity Term last, and *A. R. Wetmore*, Q.C., was heard in support of the rule.

RITCHIE, C.J., now delivered the judgment of the court.

The affidavits on which the rule was moved set forth that Sarah L. Botsford, mother of Amos E. Botsford, was owner in fee of a lot of land in the Parish of Simonds, containing a mill site, etc. That in the year 1824, Sarah L. Botsford and her then husband, the late Hon. William Botsford, entered into the actual possession of the aforesaid land and premises, and all the rents and profits thereof. That a natural stream of water called Little River ran through and across the said lot, having within its boundaries natural falls of water, about 100 feet in height, of great value for mill and manufacturing purposes, near the

City of Saint John, and over which falls the water of said river and all its tributaries had from time immemorial been accustomed to flow and pass over without diversion or obstruction. That Sarah L. Botsford died on the 4th of May, 1850, leaving the said William Botsford, her surviving, and a number of heirs, as tenants in common, of whom the applicant, Amos E. Botsford, is one; that on the 8th December, 1837, by indenture between William Botsford and Sarah L. Botsford of the one part, and John Duncan of the other part, the said premises were leased for the term of fourteen years from the 3d May, 1838; and that on the 6th June, 1853, William Botsford, by deed poll, renewed the said lease to the assignees thereof for fourteen years. That in the year 1850 or 1851, the Saint John Water Company, without the consent of the said William Botsford, the tenant by the courtesy, or of the said Amos E. Botsford, or of any of the heirs of the said Sarah L. Botsford, for the purpose of diverting the waters of Little River from its natural channel, caused certain obstructions to be made in and upon Little River, about one and a half miles above the mill and erections which had been put up for the purpose of manufacturing; that on the 26th March, 1851, William Botsford forbid the said Water Company from diverting, by any way or means, the water from Little River, or preventing its flowing in the natural channel through the said lot, holding them responsible for all damages and losses already incurred or that might thereafter be incurred; that after service of such notice and in disregard thereof, the said Company proceeded to put a dam across the river, and a 12-inch main into said dam, and did divert a large quantity of water from its natural channel. That some time in the year 1853, as the said Amos E. Botsford was informed and believed, the Water Company leased a lot of land below the said dam to Thomas A. Phillips for 21 years, from 1st July, 1851, at the yearly rent of £40, together with the right of active power to be obtained from a sluice way opening into the said dam, which sluice way was built by and under the con-

trol of the said Phillips; that some time in the year 1854, the dam and mills so erected by the said Company were damaged and partially carried away, and from that time to the present have been repaired, kept up, and added to by the Commissioners of Sewerage and Water Supply, &c. That during the year 1857 the said Commissioners, without the consent of William Botsford, or Amos E. Botsford, laid down a 24-inch main into or from the said dam or reservoir, by means of which, together with the 12-inch main, they have a present capability of withdrawing from the waters of said Little River 5,500,000 Imperial gallons of water every 24 hours, as stated in their printed report for 1857. That the said 5,500,000 gallons of water, if allowed to flow down the said river to the said falls, might be made equivalent, as estimated by C. Walker, an eminent Civil Engineer, to about 160 horse power at the mills, at the foot of the falls. That at the time of laying down the 24-inch main, in 1857, the level of the 12-inch main was changed by the Commissioners at one place, by which a greater and more rapid flow through it was caused, equal, deponent believed, to about double the quantity drawn off before such alteration. That on the 28th February last, the said Amos E. Botsford caused a copy of a paper (A) to be served on the Commissioners. This paper was signed by Amos E. Botsford; and after stating that the Commissioners and he had failed to agree upon the amount of compensation to which he claimed to be entitled for damages sustained for water taken from Little River, requested the Commissioners to take the necessary steps for summoning a jury to assess the damages he claimed, adding, "I claim to have my damages assessed under each of the following named Acts of Assembly: Act 2 Wm. 4, c. 26, entitled 'An Act to incorporate sundry persons by the name of the Saint John Water Company,' and the several Acts in amendment and incident thereto; the damage I claim is for abstraction of the water by the Commissioners, which water, but for such abstraction, would have flowed down Little River through and along my property, which property is situated on Little River." To which

a reply (B) declining to take steps for summoning a jury in accordance with his request, was received from the Commissioners on the 17th March last. That on the 17th March, Amos E. Botsford caused a copy of a paper (C) to be served on the Commissioners. To which the Commissioners, by their solicitor, replied by letter (D). "That the Commissioners are not aware that any damage whatever has been done to Mr. Botsford by any of the operations of the said Commissioners, and they therefore decline to take any steps as required by his letter of the 17th March." That by a deed of partition between the heirs of the said Sarah L. Botsford, dated prior to the 24th of February, and some time during the summer of 1865, all the other heirs remitted and acquitted unto Amos E. Botsford all right and title to the said lot of land, except their right to damages occasioned by the said obstruction on the said Little River, which were expressly reserved, and when recovered, to be divided amongst the said heirs in proportion to their several claims in the said estate of the said Sarah L. Botsford. That William Botsford died 8th May, 1864, after which Amos E. Botsford became the owner of the unexpired term of the said lease by virtue of an arbitration between him and the said Commissioners, who had purchased the same from the holders of the said lease, some time previous to the death of the said William Botsford, for the purpose, as he, the said A. E. Botsford, believed, of preventing any legal steps being taken by the holders of said lease against the unlawful acts of said Commissioners in diverting the waters of said stream.

On the part of the Commissioners, the affidavit of the Chairman, E. E. Lockhart, was produced, setting forth that in Michaelmas Term, 28th Victoria, an application was made for a *mandamus* to compel the Defendants to take necessary steps to ascertain the amount of compensation which should be paid to the owners in fee of a certain lot of land in the Parish of Simonds, situated on the north side of the new Loch Lomond road, so called, known and distinguished as Lot No. 3, Class E, on the Schedule annexed to a certain deed of partition, dated

12th November, 1824, and made between the heirs of the late Hon. William Hazen, for damages caused thereto by the operations of the Saint John Water Company, and by the said defendants. That the application was made on behalf of Frances E. Murray, Ellen Murray, Amos E. Botsford, Chipman Botsford, LeBaron Botsford, Sarah Ann Hazen, and Blair Botsford, then alleging themselves to be the owners in fee simple, as heirs, or grantees of the heirs of the late Sarah L. Botsford. That a rule *nisi* was granted, returnable on the second Saturday in said Term, and a copy served on the deponent, by which the Commissioners were ordered to show cause why a *mandamus* should not issue to compel them to take the necessary steps under the provisions of the several Acts of Assembly respectively; viz., 2 Wm. 4, c. 26; 12 Vic., c. 51; 18 Vic., c. 38, some or one of them, and all Acts in amendment thereof, to ascertain the amount of compensation which should be paid to the owners in fee of a certain lot of land for the use and convenience of the said lot of land, and the damage caused thereto by the operations of the said Saint John Water Company, in laying down a certain main or conductor in and through the same in the year 1851; also for the use and convenience of the same lot, and damage caused thereto, by the operations of the Commissioners of Sewerage and Water Supply, &c., for the time being, in laying down a certain other main or conductor in 1857, in and through the said lot of land. That cause was shown on behalf of the said Defendants against the said rule, and the same was discharged in Easter Term, 1865, on the ground that there had been no request to the said Defendants to apply to a Justice of the Peace for a warrant to summon a jury, and no absolute refusal on the part of the said Defendants.

The Saint John Water Company was originally incorporated under 2 Wm. 4, c. 26; and by the 15th Section full power and authority was given to the Company to draw water from, erect reservoirs on, and to carry pipes or conductors through (when such should be deemed absolutely necessary for the conveyance

of water to the City of Saint John by the said Corporation) the private property of individuals whose lands might lie at the source or in the line the said Corporation should think it expedient to convey the water from, or through which it might be necessary to carry such pipes or conductors, or erect such reservoirs; provided always, that no such water be drawn, reservoirs erected, etc., without a reasonable and proper compensation being allowed and paid for the use and convenience of the same, and for any damage sustained by the operations of the Company, to be agreed upon by the Corporation and the respective owners of such private property; and in case of disagreement, compensation to be determined by three arbitrators, one to be chosen by the Corporation and one by the owners of the land, which two arbitrators should choose a third; and in case of their not agreeing in such choice within ten days after their appointment, then the Lieutenant Governor, upon application of the Corporation, to appoint the third arbitrator, the award of such arbitrators, or any two of them, to be final and conclusive. In case the owners of such private property should decline making such agreement or appointing such arbitrator, then the Corporation might apply to the Supreme Court, and such court was empowered to issue a writ or warrant to the sheriff of the City and County of Saint John, requiring him to empanel twelve disinterested freeholders, which jury, upon their oaths, should "inquire of, assess, and ascertain the distinct sum or sums of money, or annual rent to be paid for the use and convenience of such private property, or the indemnification to be made for the damage that may or shall be sustained." The inquisition to be returned and filed in the office of the Clerk of the Pleas, and to be final and conclusive between the parties, the costs and expenses to be taxed by the Supreme Court, and to be borne by the Corporation.

The next Act is the 12th Vic., c. 51, entitled "An Act to increase the capital stock of the Saint John Water Company, and to provide a more efficient supply of water in the City of Saint

John." By the 6th section of this Act, the Company are authorized, for the purpose of enabling them to procure a more efficient supply of water, to enter upon private property for the purpose of procuring such supply, and there build dams or embankments on any brook, stream, &c., for the purpose of creating artificial ponds or reservoirs, and thereby to cause the flowage of such private property, and continue such flowage so long as they shall see fit; with full power to draw water from such artificial ponds or reservoirs exclusively, and to carry pipes or conductors through the private property of individuals, as may be necessary for the conveyance of said water to the City of Saint John; provided that no such dam, &c., be built, ponds or reservoirs made, flowage created, or pipes, &c., laid down through private property, without a reasonable and proper compensation being allowed and paid for the use and convenience of the same, and for all damage sustained by the operations or works of the Company, to be agreed on by the said Company and the respective owners of such private property; and in case of disagreement, then such compensation to be settled in the manner prescribed by the Act 2 Wm. 4, c. 26, or, as may be prescribed by any future Act to be passed; and for all damage the owner or owners of any mills, or other manufacturing establishments may sustain, for or by reason of any of the operations of such Company, the direct and indirect damage, as well present as future, shall be fully considered, and on any investigation under the Act for ascertaining the same, any such owner or owners may be examined under oath touching or concerning such injury or damage. This Act was amended by 13th Vic., c. 7 (local); by the 15th Vic., c. 71, and by the 16th Vic., c. 53; but such amendments had no reference to interfering with private property or compensation.

The 18th Vic., c. 38, provides for an improved system of Sewerage and Water Supply of part of the City of Saint John and Parish of Portland. Three Commissioners were appointed under this Act; and by section 6, the entire property, works, revenues, rights, and credits of the Saint John Water Company became

vested in the Commissioners, with all the powers and privileges held and enjoyed by the Company; saving, however, to all and every person or persons, Company or Corporation, all legal rights and remedies in law or equity, and all actions or suits then pending, or thereafter to be brought against the said Company for or by reason of any malfeasance or misfeasance, or any act or thing theretofore done or committed, for and by reason of any covenant, contract, or agreement theretofore made; which rights and remedies shall continue, and the actions and suits be brought, prosecuted, and ended as if this Act had not been passed; and the stockholders in said Company shall be liable in law and equity for the liquidation and payment of all such claims and damages recovered, or to be thereafter recovered therefor; provided that such claims and damages shall not be levied on any stockholders on account of any preference stock, unless the value received by the holders of the original stock on account of such original stock shall be insufficient to pay the same. And by section 15, in the event of any damage being done in the execution of the works contemplated by the Act, the Commissioners shall pay to the party sustaining the same such compensation as may be mutually agreed on, and in case the parties and Commissioners shall not agree, it shall be the duty of the Commissioners, at the request of such party, to apply to some one of the Justices of the Peace for the City and County of Saint John for a warrant, which warrant such Justice is authorized and required to issue, commanding the sheriff or any constable to summon a jury of five disinterested freeholders or occupiers of land in said City and County, to assess the damages to be paid to the party complaining. The jury shall be sworn, and the sheriff or his deputy shall preside at such inquest, and the verdict shall be binding as well on the party complaining as on the Commissioners, who shall, within ten days thereafter, pay to such party the amount assessed; the costs to be taxed by the sheriff or his deputy as on ordinary inquests held by the sheriff, and be equally borne by the Commissioners and party complaining, whose moiety shall be deducted and retained out of the amount of damages assessed.

It is not, and cannot be questioned that this court has the power to interfere by *mandamus*, and compel Companies empowered by Act to take (and who do take) land, or otherwise interfere with the rights of private property, to make compensation in such way as the Act directs. What the Legislature has empowered these Commissioners to do, and compelled them to do and submit to, as well with reference to the interests of the public as with reference to the interests of individuals, is not left in doubt. If individuals are damnified by their acts, and they refuse to proceed in the course prescribed by law, the writ of *mandamus*, in the absence of any other efficient remedy, is a suitable and proper process by which they may be compelled; for it is unquestionable that when an Act of Parliament gives power to do some particular act or duty, and provides no specific legal remedy on non-performance, the Court of Queen's Bench in England, and the Supreme Court in this Province, will, in order to prevent a failure of justice, grant, *ex debito justitiæ*, a *mandamus* to command the doing of such act or duty, and, in the language of Lord Denman in *Reg. v. The Exeter Railway Company*, "there is no higher duty cast upon this Court than to exercise a vigilant control over persons entrusted with large and extensive powers for public purposes, and to enforce, within reasonable bounds, the exercise of such powers in compliance with such purposes." The applicant in this case claims for damage done by the Water Company and for damage done by the Commissioners, and his claim is on his own behalf and on behalf of certain other heirs of the late William Botsford. The first request shown by the affidavits is dated the 24th February, 1866, and is in these words, after averring a failure to agree, "I have to request you will take the necessary steps for summoning a jury to assess the damages I claim. You will understand I claim to have my damages assessed under each of the following named Acts of Assembly: First, the Act 2 Wm. 4, c. 26, entitled 'An Act to incorporate sundry persons by the name of the Saint John Water Company,' and the several Acts in amendment and incident thereto. The

damages I claim is for abstraction of the water by the Commissioners, which water, but for such abstraction, would have flowed down Little River, so called, situate in the Parish of Simonds, in the County of Saint John, through and along my property, which property is situate on Little River, so called." The Commissioners declined to take steps for summoning a jury in accordance with this request, and, we think, rightly so. In the first place, the mode of proceeding under the Act named, and the Acts in amendment thereof, was not by summoning a jury, but by proceeding to arbitration, and, failing that, by application to the Supreme Court to issue a writ. But, supposing they had been requested to adopt the course pointed out, they had no power to act under the 2 Wm. 4, c. 26, and consequently had no power to arbitrate in the manner specified, or to apply to the Supreme Court. This claim, it will be observed, is confined to the damage occasioned by the abstraction of water by the Commissioners and to the injury sustained by himself.

The second request, dated 16th March, 1866, goes much further. After referring to the same proposal "to enter into an arrangement as to the amount of compensation for damages sustained for water taken from Little River by the Commissioners" — which it alleges the Commissioners would not entertain — it claims compensation for certain works and obstructions made and erected in and upon Little River, so called, in the Parish of Simonds, thereby diverting its water, by the Saint John Water Company, under, as they allege, the provisions of the Acts of Assembly, 2 Wm. 4, c. 26, and 12 Vic., c. 51; also, compensation for certain other works and obstructions made and erected in and upon the said Little River, and diversion of the water thereby, by the Commissioners for the time being, appointed under the provisions of 18 Vic., c. 38; and then proceeds to require the Commissioners to take the necessary and legal steps pointed out in the said Acts of 2 Wm. 4, c. 26, 12 Vic., c. 51, and 18 Vic., c. 38, one or all of them, or of any other Act or Acts in amendment thereof or addition thereto, for determining the amount of com-

pensation to be paid for all, or either, or any damage which, as the owner of certain property situate on the said Little River, below the said obstructions in the Parish of Simonds, comprising a mill privilege and other riparian rights and privileges, I am entitled to receive, in my own right, or on behalf of the other heirs of the late Sarah L. Botsford, as well for the acts and doings of the said Saint John Water Company as for the said Commissioners, in the premises."

To this application the Commissioners, through their attorney, state that "they are not aware that any damage whatever has been done to Mr. Botsford by any of the operations of the said Commissioners, and they therefore decline taking any steps as required by his letter." The Commissioners pass over unnoticed the claim for damages occasioned by the Water Company, and also that on behalf of the "other heirs." As to the first of these, it is quite clear that if Mr. Botsford had any claims, legal or equitable, for the acts of the Water Company, they are preserved to him against the Company by the 18 Vic., c. 38, by which also provision is made for realizing the same against the stockholders to the extent of the Debentures handed to them on the vesting of the Company's property in the Commissioners, and which the Legislature doubtless considered amply sufficient. At any rate, we can find nothing in the Act whereby the Commissioners are made liable for the acts or doings of the Company, and certainly nothing to warrant the issuing of a *mandamus* to take steps for summoning a jury under the 18 Vic., c. 38, to assess damages done by the Water Company under 2 Wm. 4 c. 26, and 12 Vic., c. 51. As to the other claims on behalf of the other heirs, we will deal with that in considering the Defendants' objection to the application; but as regards Mr. Botsford's individual claim for the acts of the Commissioners, we think the Commissioners did not assign a good and sufficient reason for their refusal. Their not being aware of any damage might be a very good reason for not agreeing to an amount of compensation, and was, therefore, in our opinion, just the reason why they should take

steps in summoning a jury to assess the damages. It was obviously not the intention of the Legislature that the Commissioners should be the sole judges as to whether damage or no damage had been done; and they do not say that no damage has been done, but simply that they are "not aware" of any. This may be strictly true, and yet Mr. Botsford's property may have been seriously damaged by operations done by them in the execution of the work.

This would seem to be just the case for a jury. The owner claims damages; the Commissioners are not aware of any damages; they consequently cannot agree on any amount to be paid; and a jury is summoned, who have power to inquire and assess the damages; but only in case they are satisfied the claimant has sustained damage; the burthen of showing which is, of course, on the claimant. This application is not met in the present instance by any facts touching the merits of the case, but rather on the insufficiency or defective statement of the Plaintiff's case.

Six objections were taken in showing cause:

1. That the subject matter of the present application had been substantially adjudicated on and disposed of in Easter Term, 1865.

2. That no specific demand was shown to have been made to the Commissioners to apply to the Justices of the Peace for a warrant.

3. That the applicant showed title out of himself of the property in question by a lease and renewal thereof unexpired; and did not show how he was entitled or that he was in possession at the time of making the application; and that he should have shown his title by actual documents.

4. That he had not shown any damage.

5. That the claim being on behalf of the applicant and of the other heirs, and the rule being to pay to the owners in fee, the title must be clearly set forth.

6. That the applicant did not state that he was authorized to apply on behalf of the other heirs.

As to the first point. Looking at the copy of the rule which was discharged in Easter Term, 1865, it is difficult to say that this is not substantially the same application. The practice which governs the Queen's Bench seems very clearly established; viz., "that parties must come prepared with the proper materials in the first instance," *Reg. v. Pickles* (3 Q. B., 601), and that a party once failing in consequence of a defect in the way in which he brings his case forward, is not entitled to renew the same application; and Lord Denman, in *Reg. v. The Manchester and Leeds Railway* (8 A. & E., 427), says: "The rule of practice, if not altogether universal and inflexible, is as nearly so as possible, that the court will not allow a party to succeed on a second application who has previously applied for the very same thing without coming properly prepared." * * * * Adding, "I think that every party is to come at first fully prepared with a proper case, and if he fail to do so, must not afterwards renew the application with an amended case." The principle laid down in this case was affirmed in *Reg. v. The Great Western Railway Co.* (5 Q. B., 601), the exception being where "the alteration would be simply in the form of a title or jurat, and re-swearing the affidavit would clearly leave parties in the same situation in which they were before." The case of *Ex parte Thompson* (6 Q. B., 721) is still more directly in point. That was an application for a *mandamus*. A former rule had been discharged on the ground that it did not appear that there had been a demand and refusal; since which a demand had been made which had been virtually refused. It was contended that a fresh right had accrued which did not exist when the former rule was discharged; but per Lord Denman, "We have often refused rules on this ground: we cannot have the same application repeated from time to time." But for this case we should have thought that the want of a demand and refusal, if there had been none at the time of the application, would have occasioned a failure by reason of the want of an essential ingredient, not because materials actually existing had not been brought forward, subjecting

the party to the dismissal of his application with costs for prematurely applying, but that when he had materials which gave him a case and which did not exist at the time of the former application, he would have a right to an adjudication on such new case.

In *Bodfield v. Podmore* (5 A. & E., 785), Lord Denman says, "If a party have proper materials at the time of his first application, and be not in a state of ignorance, he is not to make a new application because he did not bring them forward at first. Nothing could be more dangerous." But if the materials did not exist, and, therefore, could not be brought forward, the inference would be that when they did exist he might bring them forward, unless, indeed, in the case of a demand and refusal. The materials were necessary rather to the application to the court than to the establishment of the right, and he might have had them, and, therefore ought to have had them. We are not aware that this court has heretofore so stringently adopted the rule thus rigidly laid down. In the case before us, the injury complained of is continuous; the public are daily deriving benefit from the abstraction of the water. If this benefit is obtained in detriment of the applicant's property, and he is pecuniarily damnified thereby, he certainly ought to be compensated. However great the convenience and benefit to the public may be, they have no right to the enjoyment of it at the expense of an individual, in opposition not only to a common principle of justice, but contrary to the declared intentions of the Legislature. To deprive the applicant of a just compensation by an arbitrary technical rule of practice, unless unquestionably and inflexibly established, would be a harsh application of a rule of practice no doubt generally wholesome in its operation. That there may be circumstances warranting a departure from its arbitrary enforcement, we find intimated in *Reg. v. The Great Western Railway Company*, before cited, where Lord Denman, questioning the case of *Sherry v. Oke* (3 Dowl., 349) says: "In that case, however, there were particular circumstances, such as might in-

duce the court to exercise a power which we do not mean wholly to repudiate." This power, under the peculiar circumstances, and considering that application for writs of *mandamus* have been heretofore of rare occurrence — and, as it may be inferred from the judgment of the court in the former application, in the expression of the hope that the opinion then expressed might lead to an arrangement by which the claims of the heirs of Judge Botsford might be satisfied without the intervention of the court, that the court, as then constituted, did not consider that application as final — and bearing in mind what was truly said by the same learned judge in *Reg. v. The Eastern Counties Railway Co.* (10 A. & E., 565) that "we have no more right to refuse to any of the Queen's subjects the redress which we are empowered to administer, than to enforce against them such powers as the constitution has not confided to us," in order to prevent a failure of justice, we feel disposed to exercise the power in this, as an exceptional case, though not without great hesitancy, and with the distinct intimation that we acquiesce in the propriety of the application in general, by this court, of the rule which the Queen's Bench in England have by experience found to be convenient and sound.

As to the second point. It is no doubt an imperative rule of the law of *mandamus* that previous to the making of the application to the court for a writ to command the performance of any particular act, an express or distinct demand or request to perform it must have been made by the prosecutor to the Defendant, who must have refused to comply with such demand, either in direct terms or by conduct from which a refusal can be conclusively implied, and both the demand and refusal must also be shown in the affidavits made use of in support of the application for the rule. This objection, however, must be taken in the first instance, at the outset of the argument in showing cause, and cannot be made after the merits have been discussed. The want of this indispensable preliminary compelled the court to refuse the application originally made. Mr. Botsford's letter of the 16th

of March, 1866, appears to us to contain a distinct specific demand for compensation, and a request to the Commissioners to take the necessary and legal steps pointed out for determining the amount of such compensation; and, though it is true the Commissioners were asked to do what they had no power to do, viz., to proceed under the Acts 2 Wm. 4, c. 26, and 12 Vic., c. 51, and to do so under these Acts and under the 18th Vic., c. 38, "on behalf of the other heirs of Mrs. Botsford," without naming them or showing any authority for making such a demand on their behalf so far as these damages were concerned, we think there was no such demand as the Commissioners were bound to notice or act on. Still, as we have, independent of this, a demand of Mr. Botsford in his own right, under the 18th Vic., c. 38, so that there was no difficulty in the Commissioners refusing compliance with the former and acceding to the latter, and as that statute points out only one course for the Commissioners to adopt, by applying to a Justice of the Peace for a warrant, a request to them to proceed under the 18th Vic., amounted to a specific request to adopt that course, as was said by Patterson, J. in *Rex. v. The Nottingham Old Water Works Company* (6 A. & E., 369), "It is clear we are not bound to refuse the *mandamus* altogether if we shall be of opinion that a part of the application may be granted." We think a demand in the alternative to do one of two, three, or more things, will, if the duty enjoined form one of them, and there should have been a general refusal to comply with such demand, be sufficient.

As to the third point. By the affidavit, the lease from Judge Botsford and Mrs. Botsford would expire on the 3rd of May, 1852. This lease the grantors had full power to make, but as it does not appear to have contained any covenant or agreement for renewal, no right is shown in Judge Botsford to renew it, or to lease again for any period beyond his own life; but if he had, the period for which it was renewed would expire on the 3rd of May, 1866, and in paragraph 17 it is alleged that after May, 1864, the applicant became the owner of the unexpired term in said

lease, by virtue of an arbitration with Defendants themselves, who, it is alleged, had purchased the same from the holders some time previous to the death of Judge Botsford; so that if there was a valid lease, binding on the heirs of Mrs. Botsford after the death of Judge Botsford, the interest on it is alleged to be in the applicant through Defendants, and this they have not attempted to controvert. The applicant also shows that he is an heir of Mrs. Botsford, and so would be entitled, as tenant in fee, to an undivided interest. No doubt a party applying should show on the face of his affidavits sufficient facts from which the court may be enabled to judge whether, on the statements disclosed, he has a right to the remedy sought; see *Rex v. Bishop of Oxford* (7 East., 345). We do not find in any of the cases that the title deeds of the party are required to be produced. We think it sufficient if the applicant makes out a *prima facie* case by laying such facts before the court as will warrant them in presuming that the rights he claims are in him; see *Rex v. Jotham* (3 T. R., 577). Here the title of Mrs. Botsford is stated as derived from her father, as one of his heirs, and to which she became exclusively entitled by a deed of partition between the heirs in the year 1824, at which time she and Judge Botsford entered into the actual possession of the lands, in which possession, by themselves or their tenants, they continued and died, thus establishing a clear presumptive case of seizin in fee, which the Defendants have not attempted to impugn, either when applied to themselves, or in answer to the present application. Had Mr. Botsford applied as sole heir, no possible objection could, in our opinion, have been raised to the *mandamus* going. It would only be in the alternative either to execute the command of the writ, or to signify to the court some reason to the contrary. If want of title or interest in Mr. Botsford is returned as a reason for not complying with the *mandamus*, the question will then be legitimately raised, and can, if necessary, be properly tried, *Reg. v. Frost* (8 A. & E., 825). There may be very considerable inconvenience in directing the assessment of the damages of an undivided interest with-

out specifying what the undivided interest is; leaving it to the jury to enquire into the extent of the applicant's title, which, if ascertained before the issuing of the writ, would leave to the jury the simple duty of assessing the damages that the claimant had sustained as tenant in fee, for life or years, either of the whole, or of a specific undivided part, as the case might be, the writ guiding the jury as to the extent of the interest. Indeed, it would be more convenient, perhaps, that all parties interested should apply at the same time, so that the jury might establish the amount each would be entitled to receive; rather than having subsequent inquiries, resulting probably in different estimates, when all ought to be the same; though this inconvenience is no greater than if several persons should at law bring separate actions for damage to them growing out of one and the same trespass. The case of *Rex v. The Nottingham Old Water Works Company* (6 A. & E., 355), shews that if the amount of damages is to be limited by the interest of the party in the property injured, that is a matter properly to be pointed out to the jury. Patterson, J. says, "Here the party has sustained a damage in respect of her land, and if, in fact, it were one in respect of which the jury ought to have limited her compensation, that should have been pointed out to them at the time of the inquiry; and no complaint is made of the Chairman's summing up." We can discover nothing in the Act requiring a joint application. Section 15 declares that "In the event of any damage being done in the execution of the works contemplated by this Act, the Commissioners shall pay to the party sustaining the same such compensation as may be mutually agreed on; and in case the said parties and Commissioners should not agree, it shall be the duty of the Commissioners, at the request of such party, to apply," &c. So that when any individual feels himself aggrieved, he has a right to call on the Commissioners, and if they decline, he has a right to compel a fulfilment of their duty, without reference to the claims of other parties, with whom they may or may not have agreed, and whose claims may be identical in character, though separate and distinct in interest.

As to the fourth point. We think the applicant's affidavits show a sufficient *prima facie* case of damage to his land, unanswered in any way by the Defendants. The owner of land has, by virtue of such ownership, a right to the use of the water flowing over it in its natural course, without diminution or obstruction; not, strictly speaking, a property in the water, but a simple use of it while it passes along—there being a perfect equality of rights among all the proprietors of that which is common to all, viz., a reasonable use, no proprietor having a right to use the water to the prejudice of another.

The allegation of damages in this case is set out certainly in general and somewhat vague terms; but still, sufficient interference with his property, from which damage will be inferred, is set forth to justify the owner in asking to have his claim for compensation considered. He sets out a *prima facie* case of damage, viz., a withdrawal from a stream flowing through his land of a large quantity of water from its natural course. This may be a very trifling injury, if any, to the applicant's property, or it may be a very substantial injury, materially affecting its value, which may be in a great measure dependent on the water privilege in its natural state. But with the question of damage we have nothing to do. In the case of *Reg. v. North Midland Railway Company* (2 Railway Cases, 1) where an owner applied for a *mandamus* to ascertain and compensate him for injury done to his works by diverting a brook under powers given by the Railway Acts, and which was opposed by the Company on the ground that on the claimant's remonstrance they had restored the brook to its former level, and that no damage had been done by the alteration, the stoppage complained of having been frequently caused by floods before; it was held that it was a question for a jury to ascertain whether any damage had been done to the claimants; and that his alleging that he was injured by the diverting (*i. e.* altering the level) of the brook, was sufficient to induce the court to grant a *mandamus*.

The fifth and sixth points may be considered together and are

easily disposed of. We cannot understand how a *mandamus* could be awarded to assess the amount Mr. Botsford is entitled to receive on behalf of the other heirs of Mrs. Botsford, without it clearly appearing who those heirs are, and how he is entitled to make, in his own name, this application on their behalf and to receive their shares; this certainly cannot be ascertained from the only allegations we have, and which are contained in the 16th paragraph of the applicant's affidavit as follows: "That in and by a certain deed of partition between the heirs of the said Sarah L. Botsford, dated prior to the 24th day of February, aforesaid, and some time during the summer of 1865, all the other heirs remitted and acquitted unto this deponent all right and title to the said lot of land, except their right to damages occasioned by the obstruction on the said Little River, which were expressly reserved, and when recovered to be divided amongst the said heirs in proportion to their several claims in the said estate of the said Sarah L. Botsford." From this it would seem that "the other heirs" remitted and acquitted to Mr. Botsford all right and title to said lot, except their right to the damages Mr. Botsford now claims, which he says were expressly reserved, and when recovered (he does not say by whom) to be divided, &c.

It is not necessary for us to determine how far such a claim could at law be transferred, because there is nothing here professing even to be a transfer of the claim to Mr. Botsford, but an express exception to the contrary, expressly reserving it, so far as they could, to themselves; nor need we enquire how far the other heirs, by parting with their interest in the land, have interfered with their right to claim damages at all.

On the whole, therefore, we are of opinion that a *mandamus* should issue to the Commissioners, commanding them to make the necessary application to some one of the Justices of the Peace of the City and County of Saint John for a warrant to the sheriff, or any constable in the said City and County, to summon a jury, under the 18th Vic., c. 38, to assess the damages which A. E. Botsford has sustained in respect of his inter-

est in the lands in question, by reason of any damage done by the Commissioners in the execution of the works contemplated by that Act; or to show cause to the contrary.

Rule accordingly.

NOTE.—ALLEN, J., being connected with the applicant, took no part in this case.

BOTSFORD

vs.

SEARS ET AL., COMMISSIONERS OF SEWERAGE AND
WATER SUPPLY.

ON the motion for an injunction made upon notice on the statements contained in the bill, and upon affidavits on both sides, this case has been very ably argued, and the argument has exhibited much research.

That research has been mainly directed to two points. 1st. The natural right of riparian properties in following water; and 2nd, The construction of Acts of Parliament in derogation of those rights.

The law and practice of injunctions has also been referred to.

There is very little dispute between the parties on the first point. The principles which govern the use or enjoyment of water in a natural stream, which have been asserted and urged on the part of the Plaintiff, have been generally acquiesced in by the learned counsel for the Defendants.

No dispute has arisen out of the title of the Plaintiff, who claims to be the owner of certain undivided portions of land by inheritance and transfer, derived from the late Mrs. Sarah Botsford, the immediate enjoyment of which is in the tenant by the

courtesy, subject to the rights of the lessees of a part. Nor do the Defendants dispute that the Plaintiff, under these circumstances, has such an interest as would give him a *locus standi* in a court of justice, provided that such right has not been affected by the Acts of Assembly referred to; and that the previous doings of Defendants, and the acts which the Plaintiff now seeks to restrain by injunction, have not been authorized by those acts, which the Defendants contend that they have.

What, then, has the Legislature said on the subject?

By 2 Wm. 4, c. 26, passed in 1832, now upwards of thirty years ago, the Legislature incorporated certain persons by the name of The Saint John Water Company, in order "to promote the interest and convenience of the inhabitants of the City of Saint John, by increasing and facilitating the means of procuring water therein;" and after establishing and providing for the government of the Company, and fixing the capital stock, and the number and value of shares, the Act (sec. 15) empowered the Company "to *draw water from, erect reservoirs on, and to carry pipes or conductors through* (when such shall be deemed absolutely necessary for the conveyance of water to the city by the said corporation) *the private property of individuals whose lands may lie at the source or in the line* the Corporation shall think it expedient to convey the water from, or through which it may be necessary to carry such pipes or conductors, or erect such reservoirs; provided that no water be drawn, &c., without a proper compensation being allowed and paid *for the use of the same to the respective owners of such private property,*" and in case of disagreement determined by three arbitrators, for the mode of appointing whom the section provides. If owners of private property decline to agree or arbitrate, then by a jury to be appointed on application to Supreme Court. By section 18, the Company are bound to open vents where the Mayor, &c., point out, for supplying water for fires, &c.

By section 19, the Corporation of the City may take up the whole stock of the Company within a month, and then "it shall

be the duty of the Mayor, &c., and they are *hereby required forthwith to carry into effect the intention of the Act*, by supplying the City and its vicinity with water in the manner contemplated."

The Act 4 Wm. 4, c. 40, to revise and amend, and the Act 2 Vic., c. 33, to explain and amend the Act, were subsequently passed, in the latter of which it is recited that doubts were entertained whether some of the terms of the preceding Acts were strictly complied with, and thereby the permanence of this useful undertaking might be endangered, and a remedy was therein applied. It is not necessary to refer to these Acts further.

By 12 Vic., c. 51, the capital stock was authorized to be increased by £10,000, and by section 6 the Company were further empowered to enter upon private property "for the purpose of procuring a more efficient supply of water, and to build dams, or embankments *on any brook, stream, lake, or pond*, for the purpose of creating artificial ponds or reservoirs, and thereby to flow private property, and to draw water from such ponds or reservoirs exclusively, and to carry pipes or conductors through the private property of individuals as may be necessary for the conveyance of water to the City of Saint John, provided that no dams or embankments be built or set up, artificial ponds or reservoirs made, flowage created, or pipes or conductors laid upon or through the private property of any person without a reasonable and proper compensation being allowed and paid for the use and convenience of the same, and for all damage sustained by the operations or works of the said Company, to be agreed for by the said Company and the respective owners of such property;" and in case of disagreement, as by 2 William 4, c. 26; and there is a further provision that "for all damage the owners of mills or other manufacturing establishments may sustain for or by reason of any of the operations of such Company, the direct and indirect damage as well present as future, shall be fully considered, and on any investigation under this Act for ascertaining the same any such owner or owners may be examined under oath touching or concerning such injury or damage."

The 10th section recites that a loan had been made by the Province to the Company of £5,000, which had been expended by the Company in procuring and furnishing a partial supply of water, which had been highly beneficial on many occasions in extinguishing and checking many extensive conflagrations in the city, and that heavy losses have been prevented by such supply of water, and that it was highly desirable the Company should be aided and encouraged in their endeavors to procure a more extensive supply of water for the city, as well for the preservation of the public health and the prevention of fires, as for the cleanliness and comfort which will be thereby promoted. And it then provides that if the additional stock thereby authorized should be paid in and appropriated in whole, or the greater part within five years, then the bonds for the loan should be cancelled.

By the following section, in case the Corporation of the City shall erect tanks, fountains, or hydrants, not exceeding six in number, the Water Company shall fill the tanks once daily for the use of the poor, and if fountains or hydrants, shall furnish a free full flow of water two hours in each day for the like use.

By 13 Vic., c. 7, further time was allowed for the payment of a portion of the additional capital provided for by the last Act, and a further increase and further regulations, provided for by the 15 Vic., c. 71, and 16 Vic., c. 53.

By an Act passed in the 18 Vic., c. 38, the managing body was to be entirely changed, and provision was made for the appointment of Commissioners, who were empowered to issue Debentures to the holders of stock in the Company, and thereupon "the entire property, works, revenues, rights, and credits of the Company, subject to its outstanding liabilities, were to become vested in the Commissioners and their successors, without any act or conveyance whatever, with all the powers and privileges then held and enjoyed by the said Company under any law or laws of the Province, saving all legal rights and actions against the Company," for or by reason of any malfeasance or misfeas-

ance, or any act or thing heretofore done and committed. Then follows a section (the 13th) on which a good deal of stress has been laid, and on which I shall observe hereafter. By the 8th section the Commissioners, on notice, are required to carry service pipes, at the public expense, to the side of the street, on the written requisition from the owners of houses. And the 9th section provides that wherever mains exist or shall be laid, the owners in fee, or leaseholders for renewable terms, of lands or tenements along which such mains pass, shall, whether the water be taken upon the premises or not, be annually assessed for the same.

The 15th section makes provision for compensation for any damage done in the execution of the work contemplated by the Act, by the Commissioners.

And they are further authorized by section 33 to issue Debentures to the amount of £75,000 currency, for the purposes of the Act.

The Defendants contend that by the various provisions of the Legislature they are justified in what they have done, and, at all events, that the case is not one in which the Plaintiff would be entitled to the extraordinary interposition of this court by injunction.

The Acts of Assembly referred to avowedly contemplate the obtaining a supply of water for the City of Saint John, and subsequently of a part of the adjoining Parish of Portland, from such source or sources as may be convenient and adapted for that purpose, and it would obviously be desirable, if possible, to obtain it from a sufficient elevation to reach all parts of the district to be supplied.

The words of the original Act do not limit the Water Company in any way in their selection, but authorize them to invade private property without restriction, and to draw water therefrom, and erect reservoirs thereupon, as well as to conduct the water for the purposes of the Act; and the subsequent Act of 12 Vic., c. 51, explicitly authorizes their works to be carried on on any brook, stream, lake, or pond.

The Little River, if capable of affording a sufficient supply, having, as it is stated, a fall of 120 feet, would appear to be an eligible stream for the purpose, if it was competent for the Company to make use of it, and the words of the Act would seem extensive enough to authorize it; but it is contended that none of the Acts make provision for compensation to riparian proprietors, and that being so, the general powers of the Act cannot be held to include the stream of Little River.

In the interpretation of Acts of Parliament generally, the object of the Act is to be borne in mind, and "that," says Vattel, "must be the truest interpretation which best harmonizes with its design, its objects, and its general structure."

There is, however, with regard to Acts conferring powers upon individuals or companies affecting the private rights of others, a general rule that such Acts shall receive a strict construction, and shall not be extended by equitable intendment, and if the language is ambiguous, every presumption is to be made in favor of private property. Where, however, the words of the statute are clear, and the object of the enactment coincides with the natural interpretation, then the circumstance of the statute giving unusual and extensive powers in regard to the rights which may be affected, whatever may be the consequence to individuals, furnishes no ground for denying to the statute that construction which it plainly requires. Such is the general doctrine laid down in *D'Harris*, and the law is very clearly stated by Wigram, V. C., in *Dawson v. Pease* (16 S. J. R., ch. [N.S.], 274) cited by Mr. Botsford. That case also distinguishes between Acts of Parliament which are passed for a merely private purpose, as Inclosure Acts, and those which are enacted for objects which, though not universal, are yet of a quasi public character. In that case it was held that Commissioners under an Act of Parliament authorized to enclose certain lands in the township of A, and to make ditches and watercourses, &c., as they should be deemed necessary in the lands enclosed, and to enlarge and improve existing watercourses in the same township, were not justified in draining

the water from the lands enclosed into the ancient water course running through the township of B into the township of A, so as to obstruct the drainage of the Plaintiff's lands in the township of B, by means of such ancient water course, to his damage and injury.

In giving judgment, the learned judge said: "Where an Act of Parliament, in express terms or by necessary implication, empowers an individual to take or interfere with the property of another, and it appears to the court upon a sound construction of the Act that such was the intention of the Legislature, the court is bound to give effect to the decrees of the Legislature when thus clearly expressed. But when an Act of Parliament simply enables an individual or individuals to deal with property of his or their own for their own benefit, and does not, in express terms or by necessary implication, empower him or them to take the property or to interfere with the rights of others, the case is determined upon very different considerations."

In the latter case, the distinction between a public and private Act of Parliament becomes very material. "In that case, the learned judge held, in conformity with two verdicts which had been found on an issue, directed finding that the new drainage did obstruct the Plaintiff's drainage, and that the defendants were not justified in what they had done, and restrained them by the decree of the court from the use of the drain they had made." A number of cases were then cited by the Defendant, and relied upon. With regard to these the learned judge remarked, "It will be found that the Acts under which the Defendants (in those cases) proceeded, *empowered* them, either in express terms or by necessary implication, to interfere with the rights of the complaining parties in the way complained of," and particularizing *The Governor and Company of the British Cast Plate Manufacturers v. Meredith* (4 T. R., 796); *Sutton v. Clark* (6 Taunt., 29 Ormd.); *Boulton v. Crowther* (2d v. and c. 703), which had been among the cases cited for Defendant, he observed: "In all those cases the purposes of the statute were of a quasi public nature, and

the necessary object of the statute was to interfere with private rights, and express and definite powers were given for that purpose. On the contrary," he remarked, "the Commissioners in the case before him were appointed — not for the purpose of invading the rights of strangers — but because such machinery was necessary for working out the purposes of the Act, as between the parties interested in the lands to be enclosed."

Looking at the objects and language of the Acts now under consideration, they necessarily and clearly give a right to invade private property in the way that has been done, not for a mere private purpose, but with a view to the advantage of a large community in a matter essential to its comfort and welfare. The case therefore falls within the reason of those referred to in *Dawson v. Parr* by Wigram, V.C., the authority of which that learned judge did not deny, but held them distinguishable from the case before him.

It was further contended that the 7th section of the 18th Vic., c. 38, confined the Commissioners to Lattimer Lake and Loch Lomond for a further supply of water, but such is not, I think, its effect. The previous section (the 6th) provides that the Commissioners shall be vested with "all the power (without restriction) enjoyed by the Water Company," who, as we have seen, had a general power to obtain water from any source which they might find desirable.

The 7th section declares that it shall be the duty of the Commissioners to extend the present water supply as far as they may deem it practicable or expedient, by conveying a sufficient main or mains to Lattimer's Lake and Loch Lomond, but there are no prohibitory words to going elsewhere, and it would be a strained construction that the Legislature thereby intended that the Commissioners should either abandon the works which they had already established, or not make them available for the purpose of a further supply, if they could do so with advantage.

It has been contended that if the Plaintiff is entitled to compensation under the provisions of these Acts, he was entitled to

have the same ascertained and paid before the river was dammed, but if the making compensation is a condition precedent, and yet the stream has been diverted without compensation being made, the remedy, it appears to me, is at law, if a special remedy is not afforded by the Act; and it is therefore unnecessary to determine whether, under that section, compensation is a condition precedent or otherwise. To what extent the Plaintiff may be entitled to compensation, and what the nature of his remedy to obtain redress for any injury he may have sustained, it is not for me to say. The only question now is whether he is entitled to the injunction asked for. In the view I have taken of these Acts, and considering they authorize the draining of water from Little River, I am of opinion that he is not.

But were the case more doubtful than I consider it in the construction of the Acts, I should have felt great difficulty in acceding to this application, notwithstanding the notice given by the tenant by the courtesy, after so much time has intervened since the commencement of the operations by which the stream has been obstructed and directed, and so large an expenditure has been incurred. These works were commenced in 1850 or 1851, and early in the latter year the tenant by the courtesy was aware that the dam across the river had been made as the notice set forth in the bill, bearing date the 25th of March in that year. Yet the Company were allowed to go on and lay down a main from their reservoir, and subsequently, in 1857, to follow it up by putting in a much larger main, and the notice has not been followed up by any further step. In the meantime, more mains have been laid in the streets and service pipes put in. The debentures have been publicly sold, and in various ways every publicity has been given to these operations. The Plaintiff does not make it part of his case that he was in any way ignorant or what was being done in the Little River, and in the affidavit of the Defendant, John Sears, it is stated that he was fully aware of the arrangement for transferring the property of the Water Company to the Commissioners (which took place in 1855); in

fact he was himself appointed one of the Commissioners, but declined to act.

It is also sworn that he was aware of the laying down of the 24-inch main, some two or three years after, which, under affidavit in reply, he does not deny, and yet no step whatever has been taken to prevent the Defendants from carrying on their works in the present year. Now what the Plaintiff asks is, that the Defendants may be prevented putting in further service pipes and hydrants in connection with the mains already laid down. But the inhabitants of the lands along the streets where mains have been laid down are liable by law to assessment on account of these works; and, on the other hand, they are by law entitled to be supplied with water from the mains on an application to the Defendants. Again, the value of the Debentures under the law must be necessarily affected by any proceeding which prohibits the extending the supply of water when required.

This prohibition is the whole effect of the present application, and being so, I am clearly of opinion that whatever the rights of the Plaintiff may be, or whatever injury he may have sustained, I ought not under these circumstances to interfere in the manner desired.

The application, therefore, for the injunction must be dismissed.

LEBARON BOTSFORD

vs.

SEARS ET AL., WATER COMMISSIONERS.

THIS was an appeal by the Plaintiff from the decision of the M. R. on a bill for an injunction, on motion, and on affidavits on both sides.

The Plaintiff has not any possessing right to the property alleged to be affected by the proceedings of the Defendants. The possession is in his father as tenant by the courtesy. His mother died in May, 1850, and he claims as one of her heirs, and as assignee of two other of the heirs. The mother was under the disability of coverture long before any of the Acts of Assembly relating to the case were passed, and so continued, of course, till May, 1850. These questions would seem to arise:

1st. Has power been granted by the Legislature to take water from Little River for the supply of the City of Saint John and its vicinity?

2nd. Has that power been exercised within the meaning of the Acts of Assembly;

3rd. Has there been any such injury to the reversionary interest of the plaintiff as calls for the interposition of the Courts by injunction?

It is not disputed that the Defendants are clothed with all the powers and privileges conferred on the Saint John Water Company by 2 Wm. 4, c. 26.

The object of that Act, as well as of all subsequent legislation on the subject, was one of very great public importance, inasmuch as it bore upon the comfort, convenience, and health of the inhabitants of the City of Saint John, and the increased security of their property from destruction by fire. We do not see how it is possible for any one who examined the map of the locality which was shown to us during the argument (and the correctness of which was not questioned) to suppose for a mo-

ment that the Legislature, in giving the large general powers they have done with so wide a discretion, intended to preclude the taking water from what would seem to be one of the nearest and most convenient courses—the Little River—unless we could find in any of the Acts an exception by express words, or by necessary implication.

The 15th section of 2 Wm. 4, c. 26, clearly shows the extent of the power originally conferred upon the Water Company. It authorized the Company to draw *water from, erect reservoirs on, and to carry pipes and conductors through the private property of individuals* whose lands may be at the service or in the line the Company shall think it expedient to convey from, or through which it may be necessary to carry such pipes or conductors or such reservoirs; provided always that no such water be drawn, reservoirs erected, or pipes or conductors carried from, upon, or through the private property of any person without a reasonable and proper compensation being allowed and paid for the use and convenience of the *same*, and for *any damage* sustained by the operations of the said Corporation, to be agreed upon by the Corporation and the owners of such private property, or in case of disagreement to be settled by arbitration or by a jury, in the manner provided in the Act.

By the 6th section of 12 Vic., c. 51, the Company were authorized to enter upon private property “for the purpose of procuring a *more effectual supply of water*, and to build *dams or embankments on any brook, stream, lake, or pond*, for the purpose of erecting artificial ponds or reservoirs, and thereby to flow private property, and to draw water from such ponds or reservoirs exclusively, and to carry pipes and conductors through the private property of individuals as may be necessary for the conveying of water to the City of Saint John;” the Act then provides for compensation to owners of property damaged, to be settled in the mode prescribed in 2 Wm. 4, c. 26, s. 15.

Without following the course of legislation, which has been most particularly done by the M. R. in his judgment, we con-

sider we have cited sufficient portions of the enactment to show the powers and discretion conferred on the Company, and which it cannot be denied are now fully vested in the Defendants. We cannot, in view of the enactments referred to, entertain a doubt that any lake, stream, or pond which could be made available for the purpose of the Company could be used and appropriated under the conditions imposed for the purpose of the Company. The Acts which conferred the powers also imposed duties of a corresponding magnitude. The streets of the City were to be supplied with sufficient mains to carry the water in every direction. Then again, every owner in fee, or leaseholder, of lands and tenements along the line of the main was made liable to annual assessment, whether the water was taken by him or not, and then upon the basis of this liability loans of money were obtained and extensive liabilities incurred.

During the eighteen years which elapsed from the passing of the 2 Wm. 4, c. 26, to the death of Mrs. Botsford, no steps were taken by his or her authority to interfere with the proceedings of the Company. In 1851 it appears that the tenant by the courtesy was aware of the erection of the dam across Little River, and from that time to the time of instituting the present proceedings no abstract whatever was presented to the proceedings of the Company, although it was notorious that works of a very extensive character were being proceeded with in laying down mains from the reservoir through the streets of the City.

The construction of the Acts of Assembly should be clearly in favor of the Plaintiff's claim to induce the court to interfere by injunction after such long inaction.

The only clause which has been relied upon by the Plaintiff's counsel as restricting the right to take water from Little River is the 7th section of 18 Vic., c. 38; but, as was observed by the M. R., there are no prohibitory words in the section, and it cannot be construed to abridge the rights already granted, but rather to remove any doubt which might exist as to the power of extending the operations as far as Lattimer's Lake or Loch Lomond.

Surely the Commissioners are not bound by the 7th section to carry a main to Lattimer's Lake or Loch Lomond unless they deem it expedient. All the great and expensive works of which the Plaintiff complains have been done *since his reversionary interest* accrued, and done with his full knowledge or means of knowledge. Ignorance or surprise form no part of the Plaintiff's grievance. This matter has been fully and strongly dwelt upon by the M. R. as a ground for not interfering at the present time by injunction, when the rights of the heirs of Mrs. Botsford are neither more nor less than they were in 1850; and, if the actual making of compensation, and not merely the right to obtain compensation, was to be considered a condition precedent to the Acts of the Company or the Commissioners, it seems rather late in the day to apply, in 1863, for the extraordinary interposition of the court; and the answer to such an application on this ground is, that if, before entry on the lands and constructing the works, it was necessary to make compensation, the entry was illegal, and there is a legal remedy for the party whose possessing right was so unjustly invaded. But with the exception of the notice given in March, 1851, we hear of no complaint made by the tenant in possession, nor can we see that by any of these operations for the water supply irreparable injury is done to the persons who will succeed to the right of possession by the death of the tenant by courtesy.

In the case of *Scales v. Pickney* (s. 4 Bingham, 448 S. C., 1st M. and M., 195), there is an express proviso in the Act that the Company to whom the right was given should not enter on the private lands and grounds of any person without the consent of the owner or occupier, and an entry having been made on the lands of the plaintiff without his consent, it was held to be unlawful. The Legislature here have made no such proviso in the Acts now under consideration. With the general remarks of Best, C. J., we might be disposed to agree, and so on the general principles which are to govern the construction of Acts like the present.

In *Turner v. Sheffield* (R. R. Company, 10 M. and W., 425), there was a proviso in the Act referred to similar to that in the case of *Scales v. Pickney*.

Mr. Botsford has shown much research in bringing before us all the authorities which, in his opinion, bore upon the subject, and he has argued the case very elaborately; but neither his authorities nor his arguments have at all convinced us that the judgment from which he appeals is in any respect wrong, and, therefore, we think it should be affirmed with costs.

April 28th, 1864. A. R. Wetmore, Esquire, Counsel for the Commissioners in the case of Crookshank, for a *mandamus* to compel the Commissioners to repair a Bridge on Little River stream, handed in the following copy of the judgment delivered by the Court at Fredericton on the 23d instant.

THE QUEEN

vs.

SEARS AND OTHERS.

A RULE was granted in this cause at the instance of Andrew G. Crookshank, calling on the Defendants, Commissioners of Water Supply for the City of Saint John and Parish of Portland, to show cause why a *mandamus* should not issue to compel them to repair a certain Bridge, situate in the Parish of Simonds, belonging to Andrew G. Crookshank, pursuant to the covenants, terms, and provisions of a certain indenture, dated September, 1852, made between the Saint John Water Company of the one part and the said Crookshank of the other part. By that covenant, the Saint John Water Company undertook to build a good and sufficient Bridge for farm purposes across a certain overflowage where the said Company may deem it most expedi-

ent, and to keep the said Bridge in proper repair so long as the said overflowage continues and renders such Bridge necessary for the purposes of the said Crookshank's farm. The Bridge was built by the Company, but it is now out of repair. Subsequently, in 1855, the Act, 18 Vic., c. 38, was passed. The 6th section is as follows (see Act 18 Vic., c. 38). It seems clear that by the terms of this section the right to sue the Company for a breach of the covenant contained in the Indenture of September 16, 1852, is reserved to Mr. Crookshank. Confirmatory of this is the fact that, for a breach similar to that now alleged, Crookshank, in 1859, brought an action against the Company, in which the Company did not deny their liability, but paid £15 into court, and only disputed the amount of damages. In that case Crookshank recovered judgment for £33 17s. 2d. damages, and £43 2s. 8d. costs, on the 24th July last. Suppose there had been a further breach of the covenants by the non-repairs of the Bridge, Mr. Crookshank has now the same remedy by an action against the Company, which he had and of which he availed himself in 1859. That is a specific legal remedy, and where such remedy exists, it is laid down in *K. v. The Bishop of Chester* (1 V. R., 396) the court will not interfere by granting a *mandamus*; and in *R. v. Stoke Hammond* (5 A. & G., 584) it is said where there is any other mode of trying the rights a *mandamus* ought not to go. In the case of *Rex v. Nottingham Water Works Company* (C. A. & G., 355) a *mandamus* was granted, because the only remedy was by indictment before the sessions, which was said not to be a beneficial remedy to the party complaining, inasmuch as the result of that could only be fine and imprisonment, and the record of the sessions would not be the ground of an action by the injured party.

I can find no authority to support Mr. Weldon's doctrine, that — although the party may have a right of action — still, if from the circumstances of the persons against whom such right of action exists, the complainant would not be likely to obtain much as the result of his judgment, he would be entitled to the

remedy by *mandamus*. In the first place, it does not appear by anything before us that such is the present case, or, if proper steps were taken, Mr. Crookshank might not obtain from the Company or the stockholders the fruit of any judgment he may recover. But, be this as it may, the principle would be the same. There is the specific legal remedy by an action at law, and how could we institute an investigation into the pecuniary circumstances of the Company, and perhaps of all the stockholders, to ascertain whether they were sufficient to meet any amount which might be recovered in an action to be brought against them for unliquidated damages.

The case of *The Queen v. The Victoria Park Company* (1 Q.B., 288) seems very much in point. There, by statute, a Company was established with power to make calls, or to sue or be sued in the name of the Treasurer or any Director, which action was brought against the Treasurer, and judgment entered up against the Company, who appeared to have no assets. The Court refused to issue a *mandamus* commanding the Company to pay the sum recovered, and costs. L. Denman, C. J., in delivering the judgment of the court, states as a reason for refusing the *mandamus*, that the Plaintiff, having obtained judgment, had the "ordinary legal remedy of an execution," and "we cannot direct the *mandamus* to go, ordering the payment to be made, merely because, under the circumstances, the execution may produce no fruits. If we were to issue the writ because in this particular case there are no corporations' chattels seizable, it would be difficult in principle to refuse to issue it in any case where the sheriff should return *nulla bona*, whether the writ had issued against a corporation or an individual, for in principle there is no distinction between the two."

Rule discharged.

BOTSFORD

vs.

. COMMISSIONERS FOR WATER SUPPLY.

THIS was an application for a *mandamus* to compel the Commissioners to make a compensation to Dr. Botsford for damage to land, in which he, in common with other heirs of Mrs. Botsford, had a reversionary interest on her death, during the life of the late Judge Botsford, who had an estate for life as tenant by the courtesy, and interest in possession on his death. The first damage to the land is alleged to have arisen from the laying down of pipes on the land in the year 1851 by the Saint John Water Company, under the 2 Wm. 4, c. 26. The second damage from the laying down additional pipes in 1857 by the Commissioners, under the 18 Vic. c. 38. Both proceedings took place during the lifetime of Judge Botsford.

We see no reason why the heirs of Mrs. Botsford should not be entitled to compensation for any damage caused to their enjoyment of the land since it has come into their possession by the pipes being in the land, and any matters incident to said occupation of the land by the Commissioners.

But in the absence of any settlement of the amount of such compensation by agreement between the heirs of Mrs. Botsford and the Commissioners, the latter cannot be compelled to make such compensation until the steps made necessary by the Act 18 Vic., c. 38, on the part of the owners of the land have been taken by the claimants — that being the Act applied to such cases at the time of Judge Botsford's death, when the heirs of Mrs. Botsford came into possession of the land.

The 15th section of that Act says, "In case the said parties and Commissioners should not agree, it shall be the duty of the Commissioners, *at the request of such party*, to apply to some one of Her Majesty's Justices of the Peace of the City and County of Saint John for a warrant, which warrant such Justice is here-

by authorized and required to issue, commanding that the sheriff or any constable in the said City and County to summon a jury of five disinterested freeholders or occupiers of land in the said City and County of Saint John to assess the damages to be paid to the party complaining." No such request to the Commissioners to apply to a Justice of the Peace appears to have been made by the applicant in this case, or any of his co-heirs; nor do we think that anything which took place either verbally or by correspondence between Dr. Botsford and the Commissioners that there was such an absolute refusal to do anything on the part of the Commissioners, or to do away with the necessity of such request.

On this ground, therefore, viz., that there has been no request to the Commissioners to apply to a Justice of the Peace for the warrant to summon a jury, we think the application for a *mandamus* cannot be complied with.

The rule must be discharged.

We hope that the opinion we have expressed may lead to an arrangement by which the joint claims of the heirs of Mrs. Botsford may be satisfied without the intervention of the Court.

